

**MEMORANDUM OF UNDERSTANDING  
BETWEEN SOLANO COUNTY EMERGENCY MEDICAL SERVICES COOPERATIVE  
(SEMSC) and KAISER FOUNDATION HOSPITAL, VACAVILLE**

**AGREEMENT**

This Agreement is entered into this 19 day of NOVEMBER 2013 by and between the Solano Emergency Medical Services Cooperative, a political subdivision of the State of California, hereinafter called "SEMSC" and Kaiser Foundation Hospital, Vacaville, hereinafter called "Contractor."

**RECITALS**

WHEREAS, it is necessary and desirable that Contractor be engaged by SEMSC for the purpose of performing Level II trauma center services hereinafter described; and

WHEREAS, the SEMSC Board of Directors has adopted a Trauma Care System Plan ("Plan"); and

WHEREAS, the California Emergency Medical Services Authority has approved said Plan; and

WHEREAS, SEMSC has authorized its EMS Agency ("Solano EMS"), to issue a Request for Proposal ("RFP") for designation of an Adult Level II trauma center in Solano County; and

WHEREAS, designation of the Contractor by SEMSC as an adult Level II trauma center will serve to benefit the health and safety of the residents of, and visitors to, Solano County; and

WHEREAS, the SEMSC Board has designated Contractor as an Adult Level II Trauma Center, subject to the terms of this Agreement;

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

**TERMS AND CONDITIONS**

**1. SERVICES TO BE PERFORMED BY CONTRACTOR**

Contractor will perform services for SEMSC in accordance with the terms, conditions and specifications set forth herein and in Exhibits A and B attached hereto and by this reference made a part hereof.

Contractor will provide trauma center services meeting the minimum standards for a Level II Trauma Center as described in the RFP, attached as Exhibit A and incorporated herein by reference as though fully set forth, and as described in Contractor's Proposal for Designation as a Level II Trauma Center dated July 15, 2013 submitted in response to the RFP, attached as Exhibit B and incorporated herein by reference as though fully set forth.

Contractor shall notify SEMSC in writing, in advance when possible, of any change in any of the capabilities or resources, including personnel, described in the Proposal.

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If advance notification is not possible, Contractor shall notify SEMSC immediately upon Contractor having knowledge of any changes in any of the listed capabilities and resources and in all instances follow-up written notification shall be required as soon as possible but no later than ten (10) days from the time that Contractor becomes aware of said changes.

Solano EMS shall determine whether the change meets the minimum standards stated in the RFP, or any later standards promulgated pursuant to Section 17 of this Agreement. If Solano EMS determines that the change does not meet these standards, Contractor shall have thirty (30) days to comply with the standard before Solano EMS can declare a breach of this Agreement in accordance with Section 8. Where Solano EMS determines that a change has resulted in an immediate threat to the public health and safety, Solano EMS may suspend the trauma center agreement (to be ratified by the SEMSC Executive Board) and immediately begin transporting patients to the next closest trauma center equipped and staffed to meet the needs of the patient

**2. DOCUMENTS CONSTITUTING CONTRACT**

The RFP and Proposal are incorporated by reference into this Agreement, provided, however, that this Agreement supersedes any inconsistent provision of the RFP or Proposal. No addition to, or alteration of, the terms of this Agreement, and no verbal understanding of the parties, or their officers, agents, or employees, shall be valid unless made in the form of a written amendment to this Agreement.

**3. TERM**

The term of this Agreement shall commence on January 15, 2014 and shall be continuous during which time Contractor shall perform the services provided herein. Prior to the end of the second year of this Agreement, SEMSC shall conduct a review of Contractor's performance under this Agreement and may, at its sole option, decide to place Contractor on probation or discontinue Contractor's designation as a trauma center. The use of an outside review team for this review will be at the sole discretion of SEMSC and the expense of conducting an outside review will be at the expense of Contractor, not to exceed ten thousand dollars (\$10,000).

**4. ANNUAL DESIGNATION FEE**

The annual designation fee; currently \$150,000.00, (sum may be adjusted in future years by SEMSC), is payable to Solano EMS on or before January 15<sup>th</sup> of each year.

**5. TRAINING**

Contractor's staff shall attend educational and training programs as may be from time to time requested by SEMSC.

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**6. INDEPENDENT CONTRACTOR**

No relationship of employer and employee is created by this Agreement, it being understood that Contractor is an independent contractor, and neither Contractor nor any of the persons performing services for Contractor pursuant to this Agreement, whether said person be member, partner, employee, subcontractor, or otherwise, will have any claim under this Agreement or otherwise against County for sick leave, vacation pay, retirement benefits, social security, workers' compensation, disability, unemployment insurance benefits, or employee benefits of any kind.

It is further understood and agreed by the parties hereto that, except as provided in this contract, Contractor in the performance of its obligation hereunder is subject to the control or direction of SEMSC merely as to the result to be accomplished by the services hereunder agreed to be rendered and performed and not as to the means and methods for accomplishing the results.

If, in the performance of this Agreement, any third persons are employed by Contractor, such persons will be entirely and exclusively under direction, supervision and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment or requirements of law, will be determined by Contractor, and SEMSC will have no right or authority over such persons or the terms of such employment, except as provided in this Agreement.

**7. NON-ASSIGNABILITY**

Contractor shall not assign this Agreement or any portion thereof to a third party and any attempted assignment will be null and void and will be cause for immediate termination of this Agreement.

**8. TERMINATION FOR CAUSE**

Upon breach of this Agreement, SEMSC shall have the right, by giving written notice specifying the effective date, which shall be not less than five (5) days after the delivery of the written notice, to terminate this Agreement in whole or in part for cause, which shall include, but not be limited to:

- a. Failure, for any reason, of Contractor to fulfill in a timely and proper manner, its obligations under this Agreement and such statutes, regulations, ordinances, resolutions, executive orders, and federal directives as may become generally applicable at any time; such a failure to include:

Failure to make available sufficient personnel and hospital resources, as defined in this Agreement and in SEMSC Policy, including as defined in Section 2, the RFP and Proposal;

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Failure to provide timely surgical coverage for trauma patients, causing unnecessary risk of mortality and morbidity for the trauma patient;

- b. Submission by Contractor to SEMSC of reports that are incorrect or incomplete in any material respect.
- c. Failure, for any reason, by Contractor to meet the eighty percent (80%) for response by the trauma surgeon to Tier 1 trauma patients within any two quarters in any twelve month period.

**9. LIQUIDATED DAMAGES**

It is understood between the parties hereto that SEMSC will suffer damages in the event any of the incidents described below occur, and the parties further agree that it is impracticable and infeasible to determine the amount of actual damages. Therefore, it is agreed by and between the parties hereto that Contractor shall pay SEMSC as fixed and liquidated damages in the amounts described in paragraphs a and b below.

- a. Damages in the amount of two thousand, five-hundred dollars (\$2,500) will be paid by Contractor to SEMSC for each time that Contractor fails to submit required data as described in SEMSC Policy 2220 within fifteen (15) days of the due date. These damages will be paid within ten (10) business days of notification to Contractor.
- b. In addition to the damages described in subsection a, above, damages in the amount of one hundred dollars (\$100) per day will be paid by Contractor to Solano EMS for each day greater than fifteen (15) days that Contractor fails to submit required data as defined in SEMSC Policy. These damages will be paid within ten (10) business days of notification to Contractor.

**10. TERMINATION FOR CONVENIENCE**

Either party may terminate this Agreement upon one-hundred and eighty (180) days written notice to the other party.

**11. LAME-DUCK OPERATIONS**

In the event of termination of this Agreement for any reason, Contractor will continue to operate as a Level II trauma center at the level that is provided for in this Agreement, including during any appeal or legal challenge and the reasonable start-up period for the new trauma center.

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**12. INDEMNIFICATION, HOLD HARMLESS AND WAIVER OF SUBROGATION**

All activities and/or work covered by this Agreement will be at the risk of Contractor alone. Contractor agrees to defend, indemnify, and hold harmless the SEMSC including all of its boards, agencies, departments, officers, employees, agents, and volunteers, against any and all claims, lawsuits, whether against Contractor, SEMSC or others, judgments, debts, demands and liability, including without limitation, those arising from injuries or death of persons and/or for damages to property, arising directly or indirectly out of the obligations herein described or undertaken or out of operations conducted by Contractor, save and except claims or litigation arising through the sole negligence or wrongdoing and/or sole willful misconduct of SEMSC. Contractor agrees to waive all rights of subrogation against SEMSC for losses arising from work performed by Contractor under the terms of this Agreement. Nothing in this Agreement is intended to waive any rights of subrogation of Contractor against or require Contractor to provide indemnity to any other contractors with SEMSC for emergency medical services, including without limitation, ambulance services, other trauma centers, paramedics or other prehospital services.

**13. INSURANCE PROVISIONS**

- a. Contractor, at its sole cost and expense, will obtain and maintain in full force during the term of this Agreement the following types of insurance:
  - 1) Commercial General Liability "occurrence" coverage in the minimum amount of one million dollars (\$1,000,000) combined single limit (CSL) bodily injury & property damage each occurrence and three million dollars (\$3,000,000) aggregate, including personal injury, broad form property damage, products/completed operations, broad form blanket contractual and \$50,000 fire legal liability. County and SEMSC shall be named as additional insureds on this policy. If such coverage is afforded on a claims-made basis, coverage must continue (or include an extended reporting period provision) for a period of time after the contract has been terminated that is equivalent to the statute of limitations in the jurisdiction where the contractor's work is being performed.
  - 2) Commercial Automobile Liability coverage in the minimum amount of one million dollars (\$1,000,000) CSL bodily injury & property damage, including owned, non-owned, and hired automobiles. Also to include Uninsured/Underinsured Motorists coverage in the minimum amount of one hundred thousand dollars (\$100,000) when there is owned vehicles.
  - 3) Workers' Compensation (WC) coverage, in full compliance with California statutory requirements, for all employees of Contractor and Employer's Liability in the minimum amount of one million dollars (\$1,000,000).
  - 4) Professional liability with a limit of not less than five million dollars (\$5,000,000) each occurrence and twenty five million dollars (\$25,000,000) annual aggregate.

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- b. SEMSC is to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased to meet requirements.
- c. SEMSC reserves the right to amend the insurance requirements contained in this section.
- d. SEMSC shall notify Contractor in writing of any change in the insurance requirements and, except where Contractor meets the requirements of this paragraph 13 through a program of self-insurance, if Contractor does not deposit with within sixty (60) days of receipt of such notice a new certificate of insurance for each policy or policies of insurance incorporating such changes, this Agreement shall be deemed in default without further notice to Contractor and may be forthwith terminated by.
- e. Policies will not be canceled, non-renewed or reduced in scope of coverage until after sixty (60) days written notice has been given to the SEMSC.
- f. Contractor agrees to provide SEMSC with the following insurance documents on or before the effective date of this agreement, as applicable to self-insurance:
  - 1) Certificates of Insurance for all required overage.
  - 2) Additional Insured endorsements.
  - 3) Waiver of Subrogation endorsements with respect to SEMSC (a.k.a.: Waiver of Transfer Rights of Recovery Against Others, Waiver of Our Right to Recover from Others)
- g. All insurance required in this section shall be primary coverage as respects SEMSC and any insurance or self-insurance maintained by SEMSC shall be excess of Contractor's insurance coverage and shall not contribute to it.
- h. Contractor shall be permitted to meet the requirements of this Paragraph 13 through a program of self-insurance. Certificate of Self Insurance is required.

**14. NON-DISCRIMINATION**

- a. General -- No person will on the grounds of race, color, national origin, religious affiliation or non-affiliation, sex, age, handicap, disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.
- b. Employment -- Contractor will insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor's personnel policies will be made available to SEMSC upon request.

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**15. INVESTIGATION AND RESEARCH**

Contractor by investigation and research has acquired reasonable knowledge of all conditions affecting the work to be done and labor and material needed, and the execution of this Agreement is to be based upon such investigation and research, and not upon any representation made by the SEMSC or any of its officers, agents or employees, except as provided herein.

**16. CONTRACT MONITORING**

The SEMSC will have the right to review the work being performed by the Contractor under this Agreement at any time during Contractor's usual working hours. Review, checking, approval or other action by the SEMSC will not relieve Contractor of Contractor's responsibility for the thoroughness of the services to be provided hereunder. This Agreement will be administered for contractor by its authorized representative.

**17. ADDENDA**

Contract requirements will change if the state or SEMSC changes standards for trauma centers.

**18. CONFLICT OF INTEREST**

Contractor covenants that Contractor presently has no interest, including, but not limited to, other projects or independent contracts, and will not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement no person having such interest will be employed or retained by Contractor under this Agreement.

**19. FORCE MAJEURE**

Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party.

Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disaster.

**20. NON-EXCLUSIVITY**

SEMSC reserves the right to designate other hospitals as trauma centers when it is reasonably determined to be in the best interest of SEMSC.

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**21. CONFIDENTIALITY**

SEMSC and Contractor agree to maintain confidentiality of any patient identifiable information regarding patients or their immediate families which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors or any other source. Without the written permission of the patient, such information shall be divulged only as necessary for purposes related to the audit and evaluation of the Agreement and then only to persons having such responsibilities under the Agreement, including those furnishing services to Contractor under subcontract. SEMSC and Contractor agree that all information and records obtained in the course of providing services to covered patients shall be subject to confidentiality and disclosure provisions of applicable federal and state statutes and regulations adopted pursuant thereto. Nothing in this section limits the ability of SEMSC to utilize aggregate data provided by Contractor pursuant to this Agreement for system planning, implementation, management, and evaluation purposes, including providing such data to other participants in the Solano EMS system.

**22. MAINTENANCE OF RECORDS**

In order to enable SEMSC to ensure that Contractor is complying with the terms of this Agreement, Contractor shall maintain patient care and expenditure data in such a fashion as to be able to separately identify major trauma patients from all other patients and from all other private or public activities of the Contractor and/or its subcontractors. All administrative records under this Agreement shall be maintained by the Contractor for a minimum of five (5) years after the termination date of the Agreement.

**23. CUSTODY OF RECORDS**

SEMSC may, at its option, take custody of a copy of Contractor's non-patient administrative records related to this Agreement upon contract termination. Said records shall remain the property of Contractor and shall be kept by SEMSC in an accessible location within Solano County and shall be available to Contractor for examination and inspection.

**24. FISCAL AND PERFORMANCE AUDITS AND INSPECTION OF RECORDS**

Authorized federal, state, or SEMSC representatives shall have the right to monitor, assess, or evaluate Contractor's performance pursuant to this Agreement, said monitoring, assessments, or evaluations to include but not be limited to audits, inspection of premises, reports, patient records, and interviews of project staff and participants. At any time during normal business hours and as often as SEMSC may deem necessary, Contractor shall make available to federal, state, or SEMSC officials for examination all of its records with respect to all matters covered by this Agreement and will permit federal, state, or SEMSC officials to audit, examine, copy, and/or make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding patients receiving services, and other data relating to all matters covered by this Agreement.

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**25. REPORTS**

Contractor shall submit reports as requested by SEMSC. Format for the content of such reports will be developed by SEMSC. The timely submission of these reports is a necessary and material term and condition of this Agreement, and Contractor agrees that failure to meet specified deadlines will be sufficient cause to terminate this agreement.

**26. EVALUATION STUDIES**

Contractor will participate as requested by SEMSC in research and/or evaluative studies designed to show the effectiveness of Contractor services or to provide information about Contractor's services to major trauma victims.

**27. NOTICES**

All notices required under this Agreement will be made in writing and addressed or delivered as follows:

TO SEMSC:

Solano County EMS Agency

Ted Selby, EMS Administrator

275 Beck Avenue MS 5-240

Fairfield, CA 94533

707.784.8155

TO CONTRACTOR:

Either party may, by giving written notice in accordance with this paragraph, change the names or addresses of the persons or departments designated for receipt of future notices. When addressed in accordance with this paragraph and deposited in the United States mail, postage prepaid, notices will be deemed given on the third day following such deposit in the United States mail. In all other instances, notices will be deemed given at the time of actual delivery.

**28. GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, will be construed pursuant to and in accordance with the laws of the State of California.

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**29. SEVERABILITY OF CONTRACT**

If any term of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the contract terms will remain in full force and effect and will not be affected.

**30. CUMULATIVE REMEDIES**

The exercise or failure to exercise of legal rights and remedies by SEMSC in the event of any default or breach hereunder will not constitute a waiver or forfeiture of any other rights and remedies, and will be without prejudice to the enforcement of any other right or remedy available by law or authorized by this Agreement.

**31. CONFORMANCE WITH RULES AND REGULATIONS**

Contractor shall be in conformity with federal, state, and local rules and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and shall keep in effect any and all licenses, permits, notices, and certificates as are required. Contractor shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health, and sanitation.

Contractor shall demonstrate compliance with any revised local or state regulations regarding trauma centers within whichever is shorter of any time period stated within the regulations, a period to be negotiated with SEMSC, or 1-year from the effective date of the revised regulations.

**32. RESPONSIBILITY FOR COSTS**

All costs or expenses incurred by Contractor by reason of this Agreement with respect to the acquisition of equipment or personnel or with respect to the provisions of patient care services, including emergency patient care services of all types and description provided to patients who would not have been treated by Contractor in the absence of this agreement are the responsibility of the Contractor and are not the responsibility of SEMSC or any of the counties which have delegated local EMS agency authority to SEMSC pursuant to Health and Safety Code Division 2.5 Section 1797.200.

It is understood herein that Contractor is not waiving any eligibility for payment under any of the medically indigent adult programs which are operated by the various counties.

**33. ATTORNEY'S FEES AND COSTS**

In a legal action to enforce any of the terms and conditions of this contract in which SEMSC prevails, Contractor shall pay in addition to other amounts found due, such reasonable costs and attorney's fees that SEMSC incurs.

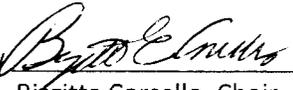
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**34. CONFLICT WITH LAWS AND REGULATIONS**

In the event that any clause of this Agreement or any clause in the RFP is found to be in conflict with any state or federal law or regulations, that state or federal law or regulation shall prevail.

SOLANO EMERGENCY MEDICAL  
SERVICES COOPERATIVE, A Political  
Subdivision of the County of Solano

KAISER FOUNDATION HOSPITAL,  
VACAVILLE

By   
\_\_\_\_\_  
Birgitta Corsello, Chair  
Solano Emergency Medical Services  
Cooperative

By   
\_\_\_\_\_  
Max Villalobos, CEO  
Kaiser Foundation Hospital,  
Vacaville

APPROVED AS TO FORM

APPROVED AS TO FORM

By   
\_\_\_\_\_  
County Counsel

By   
\_\_\_\_\_  
Attorney for Kaiser  
*Jakera Bingham, Esq*