

Level II Trauma Center Designation Agreement

This Agreement is entered into by and between the San Joaquin County Emergency Medical Services Agency, hereinafter called "SJCEMSA" and San Joaquin General Hospital, hereinafter called "Contractor."

WITNESSETH

WHEREAS, the SJCEMSA has been designated as the local emergency medical services (EMS) agency for the County of San Joaquin ("County"), a political subdivision of the State of California, by the County Board of Supervisors pursuant to Health and Safety Code, Division 2.5., Section 1797.200;

WHEREAS, Health and Safety Code, Division 2.5., Sections 1798.162, 1798.163, 1798.164, and 1798.165 authorizes a local EMS agency to develop a trauma care system, implement trauma care system policies and procedures, charge fees for designation of trauma centers, and designate trauma centers;

WHEREAS, the County Board of Supervisors desires to assure the highest quality of care is available for trauma patients;

WHEREAS, the County Board of Supervisors has adopted a Trauma Plan ("Plan"); and

WHEREAS, the California EMS Authority has approved said Plan; and

WHEREAS, County Board of Supervisors in 2012 authorized SJCEMSA to issue a Request for Proposal ("RFP") for designation of an adult level III trauma center in the County; and

WHEREAS, SJCEMSA received a proposal from Contractor, a department of San Joaquin County, seeking designation as a level III trauma center with a commitment to seek and achieve level II designation; and

WHEREAS, SJCEMSA entered into an agreement on July 23, 2013, designating Contractor as a level III trauma center; and

WHEREAS, SJCEMSA has entered into subsequent agreements on February 7, 2017, and December 4, 2018, designating Contractor as a level III trauma center; and

WHEREAS, as on June 27, 2018, Contractor received verification as a level III trauma center by the American College of Surgeons (ACS) Committee on Trauma (COT); and

WHEREAS, on April 27, 2020, the ACS-COT due to the significant impacts of the coronavirus on public health extended level III trauma center verification for Contractor to April 20, 2022; and

WHEREAS, SJCEMSA has reviewed Contractor and has found that it possesses those performance characteristics, personnel, facilities, and equipment required for designation as a level II trauma center; and

WHEREAS, Contractor is willing to continue to meet the requirements for designation as a level II trauma center and agrees to comply within the terms and conditions herein;

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

1. Services to be performed by Contractor

- A. Contractor will perform services for County 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 III trauma center as described in the RFP (Exhibit A), and as described in Contractor's Proposal for Designation as a level III trauma center (Exhibit B), dated February 15, 2013, submitted in response to the RFP, except as amended by this Agreement.
- B. Contractor shall meet and abide all applicable SJCEMSA policies, procedures, and protocols as have been or may be established by the SJCEMSA.
- C. Contractor shall notify the SJCEMSA in writing in advance of planned changes in any of the capabilities or resources, including personnel, described in its Proposal or in its ability to meet level II trauma center standards.
- D. Contractor shall notify the SJCEMSA duty officer immediately of any disruption in Contractor's provision of level II trauma center services.
- E. Contractor shall notify the SJCEMSA, in writing, within twenty-four (24) hours of becoming aware of any failure to meet compliance with EMS Policy No. 4712 Level II Trauma Center Standards and shall take corrective action within a reasonable period of time to correct said failure.
- F. Contractor shall have and maintain a fulltime trauma medical director with substantial previous experience as a trauma medical director at a level I or II trauma center.
- G. Contractor shall ensure that trauma services and care delivered are evaluated by the Contractor's internal performance improvement and patient safety (PIPS) program and as necessary, through the SJCEMSA's quality improvement (QI) program in order to improve and maintain effective clinical performance and adherence to standards.
- H. Contractor shall ensure that all surgeons on the trauma call panel are board certified by American Board of Surgery. Contractor shall limit the use of locums and part-time surgeons for the trauma call panel cumulatively to 10% of time per month. Contractor may, with the approval of SJCEMSA, exceed the 10% limit. Such approval shall not be unreasonably withheld. Contractor shall ensure surgical residents working in the trauma program are properly supervised by an attending trauma surgeon.
- I. Contractor shall ensure an attending trauma surgeon with critical care fellowship training conducts daily rounds in the intensive care unit (ICU) on each patient admitted to the trauma service. Contractor shall ensure an attending trauma surgeon, with or without critical care fellowship training, conducts daily rounds on each patient admitted to the trauma service not in an ICU setting. All ICU and non-ICU rounds will be done in person and shall include a written note and the development and implementation of a treatment plan.

- J. Contractor shall manage its operating suites in such a manner to ensure an open suite is available at all times for treatment of a major trauma patient except when such suite is being used to treat a major trauma patient. If the open suite becomes encumbered Contractor shall ensure that the next available operating suite shall be held open and not used except to treat a major trauma patient. An operating suite being held open for the treatment of a major trauma patient pursuant to this provision may be used for the treatment of an acute general surgical emergency with the direct oral or written permission of the in-house attending trauma surgeon. Each occurrence of an open operating suite being used for a patient other than a major trauma patient shall be reported to the SJCEMSA in writing within twenty-four (24) hours.
- K. Contractor shall have an operating suite team available in house and immediately available at all times except when such team is being used to treat a major trauma patient. Contractor shall have an operating suite team on call and promptly available at all times except when such team is being used to treat a major trauma patient. Contractor shall require the on call team to respond to the hospital and be in house whenever the primary in house team is encumbered. Each occurrence of an open operating suite team being used for a patient other than a major trauma patient shall be reported to the SJCEMSA in writing within twenty-four (24) hours.
- L. Contractor shall have and maintain an in-house trauma surgeon 24 hours a day, seven days a week, every day of the year, immediately available within 15 minutes.
- M. Contractor shall have and continuously maintain onsite neurosurgical service 24 hours a day, seven days a week, every day of the year, promptly available within 30 minutes.
- N. Contractor shall have and continuously maintain onsite interventional radiology service by qualified surgeons or qualified radiologists 24 hours a day, seven days a week, every day of the year, promptly available within 30 minutes.
- O. Contractor shall meet and adhere to all requirements as a base hospital pursuant to SJCEMSA Policy No. 4901 Base Hospital Standards.
- P. Contractor shall ensure trauma nurse clinicians participate in daily rounding with the attending surgeons. Following rounding, trauma nurse clinicians shall ensure the attending surgeon's daily plan of care is implemented and document progress with a written nursing note.
- Q. Contractor shall cooperate and respond to SJCEMSA inquiries about performance under this Agreement.

2. Documents Constituting Contract

The SJCEMSA Trauma Plan, SJCEMSA RFP No.12-001, and the Contractor's Proposal are incorporated by reference into this Agreement. However, 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. Annual Designation Fee

Contractor shall pay the annual designation fee set by the Board of Supervisors to the SJCEMSA on or before August 1 of each year of the Agreement.

4. Training

Contractor's staff shall attend educational and training programs as may be required from time to time by the SJCEMSA.

5. 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 SJCEMSA or 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 County 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 County will have no right or authority over such persons or the terms of such employment, except as provided in this Agreement.

6. Non-Assignability

Contractor will 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.

7. American College of Surgeons Committee on Trauma (ACS-COT) Verification

Contractor shall continuously maintain a level III ACS-COT verification unless Contractor achieves a higher verification.

Contractor agrees to achieve ACS-COT verification as a level II trauma center by a no later than July 1, 2022, and shall continuously maintain a level II ACS-COT verification thereafter for the duration of this Agreement.

Contractor shall cooperate completely and thoroughly with the SJCEMSA and the ACS-COT on all verification processes. Contractor shall allow SJCEMSA personnel access to all aspects of the verification process. Contractor may appeal findings of the ACS-COT verification report

pursuant to the provisions established by the ACS-COT. Contractor shall simultaneously inform SJCEMSA of any and all objections, appeals, clarifications sought by Contractor from the ACS-COT. The ACS-COT verification visits shall be arranged and facilitated by Contractor.

8. Term

This Agreement shall commence on April 1, 2021, and continue through August 31, 2025, unless terminated earlier or extended by mutual agreement of both parties.

9. Effective Date

The effective date of this Agreement shall be the date of the last party's signature on this Agreement.

10. Termination for Convenience

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

11. Termination for Cause

The SJCEMSA may terminate this Agreement upon written notice to Contractor, subject to Contractor's opportunity to cure as set forth below, upon the occurrence of any one or more of the following events:

- A. Any material breach of this Agreement by Contractor;
- B. Any violation by Contractor of any applicable laws, regulations, local ordinances, or EMS policies and procedures;
- C. Any failure by Contractor to provide timely surgical and non-surgical physician coverage for trauma cases;
- D. Submission by Contractor to the SJCEMSA reports or information that Contractor knows or should know are incorrect in any material respect;
- E. Any failure by Contractor to comply with trauma center standards;
- F. Loss or suspension of licensure as an acute care hospital, loss or suspension of any existing or future special permits issued by state or federal agencies necessary for the provision of the services provided by Contractor under the terms of this Agreement, or loss or suspension of accreditation by the Joint Commission or an equivalent accreditation body;
- G. Any failure to comply with a plan of correction imposed by the SJCEMSA;
- H. Any failure to remedy any recurring equipment malfunction, shortages of physicians, nurses and or other staff, staff response delays, or facility problems of Contractor, which causes or contributes to Contractor's diversion of ambulances transporting trauma patients intended for Contractor; and
- I. Repeated failure to submit specified reports, trauma registry data, or other information required under this Agreement.

12. Opportunity to Cure

Prior to the exercise of the SJCEMSA's right to terminate for cause, the SJCEMSA shall give Contractor written notice of the violation(s) thirty (30) days prior to the termination date (hereinafter "Correction Period") specifying in reasonable detail the grounds for termination and all deficiencies requiring correction. If Contractor has not substantially remedied each deficiency

prior to the end of the Correction Period to the satisfaction of the SJCEMSA, or submitted a plan of correction to SJCEMSA within the Correction Period that is accepted by SJCEMSA, then after the Correction Period SJCEMSA may terminate this Agreement upon written notice to Contractor, specifying the effective date of termination. The SJCEMSA may shorten the Correction Period to immediate suspension if the SJCEMSA determines that Contractor's action or inaction has seriously threatened, or will seriously threaten, public health and safety.

13. Lame-Duck Operations

In the event of a change in providers of trauma center services leading to the termination of this Agreement, and at the sole direction of the SJCEMSA, Contractor will continue to operate as a 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.

14. Indemnification, Hold Harmless and Waiver of Subrogation

In the event that the ownership or governance structure of Contractor changes during the agreement period, Contractor agrees to adhere to the indemnification, hold harmless, and waiver of subrogation requirements specified by SJCEMSA.

15. Insurance

Contractor shall maintain insurance coverage and limits as separately established by the County Board of Supervisors. In the event that the ownership or governance structure of Contractor changes during the agreement period, Contractor agrees to adhere to the insurance requirements specified by SJCEMSA.

16. Non-Discrimination

Contractor shall comply with all applicable federal, state, and local laws and regulations including County equal opportunity requirements. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101 and 1102. Contractor will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender, gender expression, gender identity, genetic information, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor will Contractor discriminate in the provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex, gender, gender expression, gender identity, genetic information, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

17. 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 SJCEMSA or any of its officers, agents or employees, except as provided herein.

18. Contract Monitoring

The SJCEMSA 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 SJCEMSA 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.

19. Addenda

Contract requirements will be amended in writing and incorporated into this Agreement as addenda if the state or County changes standards for trauma centers and/or SJCEMSA policies and procedures.

20. Conflicts 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.

21. 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, or other natural disaster.

22. Non-Exclusivity

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

23. Confidentiality

The parties agree to maintain the confidentiality of all patient information and records obtained in the course of providing services under this Agreement in accordance with all applicable federal and state statutes and regulations and local ordinances. Such information shall be divulged only as provided by law. The SJCEMSA represents and warrants to Contractor that it is a "Health Oversight Agency" as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and, based upon such representation, the parties agree that SJCEMSA is a health oversight agency and that, a Business Associate Agreement is not necessary. Disclosure of any medical staff document to SJCEMSA shall not constitute a waiver by Contractor of the protections afforded by California Evidence Code Section 1157. If any disclosure of information contained in a medical staff committee document is sought from SJCEMSA by a third party, SJCEMSA shall notify Contractor and shall raise all applicable objections or defenses to the demand for disclosure.

24. Maintenance of Records

In order to enable the SJCEMSA 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.

25. Fiscal and performance Audits and Inspection of Records

SJCEMSA representatives shall have the right to monitor, assess, or evaluate Contractor's performance pursuant to this Agreement. Said monitoring, assessments, or evaluations may include but not be limited to audits, inspection of premises, reports, patient records, and interviews of Contractor's employee and participants. At any time during normal business hours and as often as the SJCEMSA may deem necessary, Contractor shall make available to SJCEMSA officials for examination all of its records, including financial records, with respect to all matters covered by this Agreement and will permit SJCEMSA officials to audit, examine, copy, and/or make excerpts of 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. Contractor shall annually provide SJCEMSA with a detailed accounting of the financial aspects of the trauma service, including but not limited to, payer mix, charges, collections, and comprehensive financial statements.

26. Reports

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

27. Evaluation Studies

Contractor will participate as requested by the SJCEMSA 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.

28. Contract Administrators

The SJCEMSA Administrator or designee, and Contractor's Chief Executive Officer (CEO) or designee, shall be the primary contacts for the purpose of the administration of this Agreement.

29. Notices

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by giving the party such notice, or may be served by certified mail, postage prepaid, return receipt requested, to the following representatives at the addresses cited below:

To Contractor: David Culberson, CEO
San Joaquin General Hospital
P.O. 1020
Stockton, CA 95201

To County: Dan Burch, EMS Administrator
San Joaquin County EMS Agency
P.O. Box 220
French Camp, CA 95231

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.

30. Governing Law and Venue

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. Venue of such action shall be exclusively in San Joaquin County.

31. 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.

32. Cumulative Remedies

The exercise or failure to exercise of legal rights and remedies by the County or SJCEMSA 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.

33. 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 state regulations regarding trauma centers within whichever is shorter of any time period stated within the regulations, a period to be negotiated with the SJCEMSA, or one-year from the effective date of the revised regulations.

34. 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 the County or SJCEMSA.

35. Attorney's Fees and Costs

In a legal action to enforce any of the terms and conditions of this Agreement in which the County or SJCEMSA prevails, Contractor promises to pay in addition to other amounts found due, such reasonable costs and attorney's fees, not to exceed the hourly rate charged by Deputy County Counsel IV attorneys in the Office of the County Counsel, that the County and SJCEMSA incurs.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above:


SAN JOAQUIN COUNTY EMS AGENCY

SAN JOAQUIN GENERAL HOSPITAL

By: BY  3/16/21
Dan Burch Date
EMS Administrator

By:  3/16/21
David Culberson Date
Chief Executive Officer

APPROVED AS TO FORM:
J. Mark Myles County Counsel

By:  3/16/2021
Zayante (Zoey) P. Merrill Date
Deputy County Counsel