

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SAN FRANCISCO LITHOTRIPSY GROUP, LLC**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and San Francisco Lithotripsy Group, LLC, hereinafter called "Contractor."

\* \* \*

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing portable lithotripsy equipment and support personnel services.

**Now, therefore, it is agreed by the parties to this Agreement as follows:**

**1. Exhibits and Attachments**

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Exhibit E—Corporate Compliance SMMC Code of Conduct
- Attachment I—§ 504 Compliance

**2. Services to be performed by Contractor**

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed THREE HUNDRED THOUSAND DOLLARS (\$300,000). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this Agreement. All invoices must be approved by the Chief Medical Officer or their designee and paid within 30 days of receipt of the invoice by the Medical Center. Invoices must be sent to: [SMMC-Accounts-Payable@smcgov.org](mailto:SMMC-Accounts-Payable@smcgov.org). Receipt and processing time may be delayed if invoices are not submitted electronically.

**4. Term**

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Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2017 through June 30, 2019.

**5. Termination**

This Agreement may be terminated by Contractor or by the Chief of the Health System or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

**6. Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

**7. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

**8. Hold Harmless**

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**9. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

**10. Insurance**

**a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

**b. Workers' Compensation and Employer's Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

**c. Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury,

including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability... \$1,000,000
- (b) Professional Liability..... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**11. Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

The parties agree that, pursuant to Section 70713 of Title 22 of the California Code of Regulations ("Title 22"), San Mateo Medical Center retains all professional and administrative responsibility for services rendered under this Agreement to the extent that such services are subject to Title 22 and are rendered by a "qualified professional person" as used in Section 70713, and the parties further agree in that instance that this Agreement is otherwise subject to any applicable requirements of Title 22.

Further, Contractor certifies that it and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. Accordingly, Contractor shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

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Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

**12. Non-Discrimination and Other Requirements**

**a. General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

**b. Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

**c. Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

**d. Compliance with County's Equal Benefits Ordinance**

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

**e. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**f. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to



execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

**g. Reporting; Violation of Non-discrimination Provisions**

Contractor shall, upon request, report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

**13. Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

**14. Retention of Records; Right to Monitor and Audit**

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(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

**15. Merger Clause; Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**16. Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**17. Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: San Mateo Medical Center  
Attn: Accounts Payable  
Address: 222 W 39<sup>th</sup> Ave

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San Mateo, CA 94403  
Email: [SMMC-Accounts-Payable@smcgov.org](mailto:SMMC-Accounts-Payable@smcgov.org)

In the case of Contractor, to:

Name/Title: San Francisco Lithotripsy Group, LLC  
Address: 9825 Spectrum Dr., Bldg. 3  
Austin, TX 78717  
Telephone: (888) 252-6575  
Facsimile: (512) 439-8303

**18. Electronic Signature**

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

\* \* \*



In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: San Francisco Lithotripsy, LLC

By: Sun Medical Technologies, Inc., its management agent

  
Contractor Signature

4-18-2017  
Date

Gary Kozen, VP  
Contractor Name (please print)

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COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

## Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following equipment and support services:

A. Lithotripsy equipment and support personnel services including

1. **Equipment.** The machinery, equipment, and other personal property described here, is hereinafter referred to, collectively, as the "equipment". The parties hereto mutually understand, agree, and stated that this Agreement is not a joint venture between them and that neither party has an equity or ownership interest in the other, either direct or removed in any degree. Equipment maintenance logs will be made available for review upon requested by SMMC.
  - a. The equipment covered by this Agreement is one (1) portable Lithotron Extracorporeal Shockwave Lithotripter, transported in a custom built truck.
  - b. Schedule for use of equipment. Contract shall make the equipment and support personnel services available to SMMC at SMMC's election, at a site or sites identified by SMMC on SMMC's premises, from Monday through Friday, 7:30 a.m. to 5:00 p.m., depending upon SMMC's scheduled day of services.
  - c. Location. During the term of this Agreement, the equipment shall be located at a site within SMMC's premises. Said site shall have all utility hookups and all other conditions, hookups or other means of attachment recommended by Contractor to secure the equipment to SMMC's premises so that the equipment may be operated in the performance of lithotripsy procedures.
2. **Support Personnel.** Contractor shall provide one (1) certified radiology technologist to maintain continuous supervision over the operation of the equipment and to cooperate with those physicians who have been appointed to the Medical Staff of SMMC and granted lithotripsy privileges in performing lithotripsy procedures with the equipment by SMMC. Contractor shall have the sole responsibility for training its personnel pursuant to the standards promulgated by the manufacturer of the equipment for certification to operate the equipment. Such personnel shall meet the non-medical staff credentialing requirements of SMMC. SMMC will assist Contractor and provide Contractor with documentation to permit personnel to meet these requirements. Upon request, Contractor shall provide reasonable evidence of the qualifications of such personnel.
3. Contractor will provide SMMC with annual evaluations, radiology training certifications, and Purified Protein Derivative Tine Test (PPD) results conducted by Contractor's support personnel.
4. Contractor's technicians are required to complete an orientation to the SMMC surgery Department.
5. Contractor will provide equipment operations training to the Operating Room Staff at SMMC.

B. Items to be provided by SMMC:

1. **Services.** While the equipment is located on its premises, SMMC shall provide all services and facilities necessary to enable Contractor to properly perform its duties under this Agreement. Contractor requires: a suitable area adjacent to SMMC to park the transport truck; a site within SMMC to operate the equipment according to manufacturer's specifications; access to electrical power, telephone lines, water, and water drainage. In addition, SMMC shall provide certain general medical supplies reasonably necessary for the operation of the equipment including, but not limited to, shockwave electrodes, drugs, medications, x-ray film, IV set-ups, catheters, and stents. SMMC shall provide personnel to assist Contractor's certified radiology technologist with transport of equipment into SMMC. SMMC shall also provide reasonable security protection for Contractor's equipment and Contractor's personnel in order to enable Contractor to properly perform its duties while on SMMC's premises.
2. Under no circumstances shall SMMC or San Mateo County be liable for the acts or omissions of Contractor and Contractor is bound in full by the indemnification language of the Agreement.
3. **Data.** SMMC shall be solely responsible for making available to its medical staff data concerning treatment results from lithotripsy procedures performed with the equipment that is contained in SMMC's medical records. Further, SMMC shall be solely responsible for scheduling patients for the equipment. SMMC shall have in place necessary procedures to ensure that written consent is signed for each procedure; provided, however, that nothing herein shall act to transfer to SMMC any responsibility a physician may have to obtain informed consent from a patient.
4. **Medical Records.** SMMC shall maintain medical records for each patient who receives procedures performed with the equipment at SMMC's premises. Such medical records shall be the property of SMMC and SMMC shall be responsible for the storage, maintenance, and confidentiality of such records. SMMC shall be solely responsible for fulfilling all requirements imposed by law with respect to the preparation, maintenance, security, disclosures, and retention of records concerning procedures performed with the equipment and records of patients receiving treatment with the equipment. To the extent permitted by law, Contractor shall have access to medical records as reasonably necessary to perform its obligations under this Agreement. This provision shall not affect the obligation of the attending physician to document the medical record. Contractor agrees to keep confidential any and all records of SMMC to which it may from time to time have access in the performance of its obligations under this Agreement and to disclose such records to others only as may be required by law.
5. **Properly Qualified Medical Staff.** SMMC is responsible for establishing training standards and other credentialing requirements for physicians who are providing patient treatment with the equipment. SMMC shall notify Contractor of such physicians and other SMMC personnel who meet SMMC's qualifications and who will be using the equipment. SMMC and Contractor shall cooperate to permit only qualified physicians and other personnel to use the equipment. SMMC shall identify SMMC administrative personnel who shall be reasonably available to Contractor personnel (including the certified radiology technologist) to respond to questions relating to the equipment and services

performed under this Agreement, including the identification of properly qualified medical staff.

C. **Equipment.** With regard to the equipment SMMC and Contractor agree to the following:

1. **Site.** SMMC shall provide a single site on its premises at which the equipment will be located during the term of this Agreement.
2. **Use.** SMMC shall have the right to the use, possession and control of the equipment during the term and intervals indicated herein and shall use the equipment in a careful and proper manner and shall comply with and conform to all national, state, municipal, police and other laws, ordinances and regulations in any way relating to the possessions or use of the equipment. SMMC shall, during all times that the equipment is in use by Contractor required to comply with the aforesaid laws. At all times during which the equipment is located on site at SMMC's premises, SMMC shall maintain and make available to Contractor, parasurgical facilities, including but not limited to anesthesia, recovery facilities, cystoscopic tables, and the like, all of which shall be adequately staffed by medical staff physicians and personnel. SMMC expressly understands and consents to Contractor's use and/or lease of the equipment to other parties at any time other than those during which SMMC is actually using or is scheduled to use equipment to perform lithotripsy services. Contractor shall not permit anyone other than SMMC to treat patients using the equipment on the SMMC premises during the term of this Agreement.
3. **Contractor's Inspection.** Contractor shall, at any time that the equipment is located on site at the premises of SMMC during SMMC's normal business hours, have the right to enter into and upon the premises where the equipment may be located for the purpose of inspection, making repairs and/or alterations as required by law or contract.
4. **Alterations.** SMMC shall not make any alterations, modifications, additions or improvements to the equipment. Any alterations, modifications, additions, or improvements to the equipment required by the terms of any contract governing the equipment or any governmental rule, regulation, statute or order of any kind requiring such alterations or modification, whether currently in existence or enacted in the future, shall be made by Contractor. Contractor shall bear the cost of such alterations, modifications, additions or improvements.
5. **Repairs.** Contractor shall, at its own cost and expense, keep the equipment in good repair, condition, working order, and shall furnish any and all parts, mechanisms, and devices required to keep the equipment in good mechanical and working order, including the provision of any maintenance agreement required by the manufacturer.
6. **Loss and Damage.** In the event of loss or damage of any kind whatever to any items of equipment provided by Contractor while located on site at SMMC, SMMC shall:
  - a. Permit Contractor to enter SMMC's premises and place the equipment in good repair, condition, and working order, or replace the same with like equipment in good repair, condition, and working order; or

- b. Permit Contractor to immediately remove the equipment from SMMC premises and repair or replace it with the same or similar equipment that is in good repair, condition, and working order.
- c. Notwithstanding anything to the contrary contained herein, Contractor shall be responsible for all loss or damage caused by those events beyond the reasonable control of SMMC, its employees, agents, or its Medical Staff, specifically including natural disasters or other Acts of God.

7. **Personal Property.** The equipment is, and shall at all times be and remain, personal property of Contractor notwithstanding that the equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to, or imbedded in, or permanently resting upon, any real property or any building thereon, or attached in any manner to which is permanent as by means of cement, plaster, nails, bolts, screws, connection to utilities, or otherwise.

**D. No Warranties**

Contractor MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Contractor hereby assigns, transfer, and passes through to SMMC any and all warranty rights it may possess with regard to or against the manufacturer of the equipment for the term of this Agreement. Contractor shall cooperate with SMMC in the enforcement of these warranty rights. In the event that the assignment of the warranty of the manufacturer of the equipment is prohibited, Contractor shall enforce any claims against manufacturer on behalf of SMMC as if no assignment had occurred. Such enforcement by Contractor shall be at the express and written request, direction, and expense of SMMC.

**E. Record Retention; Access to Records**

If this Agreement is subject to Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. Section 1395x(v)(3)(I), and the regulations promulgated thereunder, 42 C.P.R., Section 420, Subpart I, both parties shall make available, upon written request of the Section of Health and Human Services, or upon written request of the United States Comptroller General, or any of their duly authorized representatives, the contract and books, documents, and records of either party that are necessary to certify the nature and extent of the costs to SMMC of this Agreement. Further, if Contractor carries out any of its duties under the Agreement through a further subcontract having a value or cost of \$10,000 or more over a twelve-month period, with a related organization, such further subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the stated organization shall make available upon written request of the Secretary, or upon written request of the Comptroller General, or any of their duly authorized representatives, the subcontractor and book, and records of such organization that are necessary to verify the nature of such costs.

**F. Bankruptcy**

Neither this Agreement nor any interest therein is assignable or transferable by operation of law, if any proceeding under the Federal Bankruptcy Code, as amended, is commenced by SMMC or Contractor, or such an action is commenced against SMMC or Contractor and is not dismissed

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within 60 days after the commencement thereof, or if SMMC or Contractor is adjudged insolvent, or if SMMC or Contractor makes any assignment for the benefit of its creditors, or if a writ of attachment or execution is levied on any item or items of the equipment and is not released or satisfied within ten days thereafter, or if a receiver is appointed in any proceeding or action to which SMMC or Contractor is a party with authority to take possession or control of any items of the equipment, then this Agreement shall automatically terminate upon such occurrence and, except for SMMC's liability to Contractor for unpaid amounts under this Agreement, shall be of no further form and effect. Upon any such occurrence, Contractor shall have and may also exercise any one or more of the remedies set forth in Section 10 hereof.

#### **G. Default; Remedies**

1. Default by SMMC. It shall constitute an event of default under this Agreement (an "Event of Default") if SMMC:
  - a. Fails to pay any amount herein provided within twenty (20) days after the same is due and payable and within ten (10) days after receipt of written notice of such failure;
  - b. Fails to observe, keep or perform any other provision of this Agreement required to be observed, kept or performed by the SMMC; or
  - c. Fails to remedy or cure any monetary default under this Agreement after receipt of written notice thereof from Contractor or fails to remedy, cure, or remove any other default within twenty (20) days after receipt of written notice thereof from Contractor.
2. Contractor's Remedies. If an Event of Default shall occur, Contractor shall have the right to exercise any one or more of the following remedies:
  - a. Sue for all payments then accrued with respect to any or all items of equipment.
  - b. Take possession of any or all items of equipment, without demand or notice, wherever the same may be located, without any court order or other process of law. SMMC hereby waives any and all damages occasioned by such taking of possession unless caused by Contractor's negligence or willful misconduct.
  - c. Terminate this Agreement as to any or all items of equipment.
3. Default by Contractor. It shall also constitute an Event of Default under this Agreement if Contractor:
  - a. Fails to provide SMMC with the equipment, or comparable substitute equipment, as scheduled for three (3) consecutive scheduled visits during any twelve month calendar period, unless otherwise agreed mutually by the parties hereto; it being further understood that the County has no obligation to pay for a scheduled visit day if such equipment is not present at SMMC.



b. Fails to observe, keep or perform any other provision of this Agreement required to be observed, kept or performed by Contractor.

**H. Ownership**

The purpose of this Agreement is to make available to SMMC the use of the equipment and the support personnel, and nothing more; the equipment shall at no time be the property of the SMMC, and the SMMC shall have no right, title or interest therein or thereto except as expressly set forth in this Agreement.

**I. Adverse Determination**

Contractor represents and warrants that it is not currently sanctioned or excluded from any governmental program such as Medicare and Medicaid. Upon adoption of any state or federal legislation, or upon the issuance of a determination by a governmental entity, a Medicare carrier or intermediary, or an independent third party that is acceptable to each party that the arrangement evidenced by this Agreement violates any Federal law, rule, or regulation relating to Medicare/Medicaid, including fraud and abuse issues, this Agreement shall terminate within sixty (60) days thereafter or sooner if such determination so advises; provided however, that in the event that such a determination is issued, contractor, may elect to continue this Agreement by reorganizing its internal structure or its agreements so that such are in accordance with the law, rule or regulation in question. In such event, within sixty (60) days of the issuance of such determination, Contractor shall deliver notice to SMMC of its intention to continue this Agreement as provided herein and furnish SMMC with acceptable documentation that Contractor is in compliance with the pertinent law, rule, or regulation. In such case, the terms and conditions of this Agreement shall remain in full force and effect.

**J. Waiver**

No covenant or condition of this Agreement can be waived except by the written consent of Contractor and SMMC. Forbearance or indulgence by either party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the party to which the same may apply and, until complete performance by the other party of said covenant or condition, either party shall be entitled to invoke any remedy available to it under this Agreement or by law or in equity despite said forbearance or indulgence.

**K. Gender; Number**

Whenever the context of this Agreement requires, the masculine gender shall include the feminine or neuter, and the singular number shall include the plural; and whenever the word "Contractor" is used herein, it shall include all assignees of Contractor.

**L. Headings**

The section's and paragraph's headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretations of this Agreement.

**M. Time**

Time is of the essence to this Agreement and each and all of its provisions.

**N. Severability**

The invalidity of any term or terms of this Agreement shall not affect any other term of this Agreement, which shall remain in full force and effect.

**O. Third-Party Beneficiary**

Contractor and SMMC acknowledge that nothing contained herein is intended to nor shall it cause any person, including any individual partner of Contractor, or entity to become a third party beneficiary of any of the provisions or obligations of this Agreement.

**P. Corporate Authorization**

Each individual executing this Agreement on behalf of a corporation represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, that this Agreement is binding on said corporation in accordance with its terms, and that this Agreement is not in violation of or inconsistent or contrary to provisions of any other agreement to which such corporation is a party.

GK

## Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

- A. SMMC shall pay to Contractor for the equipment provided under this Agreement an amount equal to ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) per procedure during which the equipment is utilized.
- B. All procedures are to be done on a to-follow basis unless prior arrangements are made. For down-time over one (1) hour, the cost is TWO HUNDRED FIFTY DOLLARS (\$250.00) per hour.
- C. Cancellation notice of 24 hours is required. SMMC shall use its best efforts to notify Contractor of all changes and/or cancellations in the schedule of cases by 5:00 p.m. of the preceding day. If a procedure is canceled before 5:00 p.m. the previous day or at any time for a medical reason, including, but not limited to, the patient passes the stone or the attending physician cancels the procedure due to the patient's medical condition, or due to emergency utilization of SMMC's operating rooms, SMMC shall not be liable to Contractor for any charge. If a procedure is canceled after 5:00 p.m. on the day prior to a scheduled procedure for reasons other than a medical reason or due to emergency utilization of SMMC's operating rooms, Contractor may require SMMC to pay for the canceled procedure unless at least one other lithotripsy procedure is performed on the day the procedure was scheduled to be performed.
- D. The term of this Agreement is July 1, 2017 through June 30, 2019. Maximum payment for services rendered under this Agreement will not exceed THREE HUNDRED THOUSAND DOLLARS (\$300,000). Invoices will be approved by acute care services nurse manager and paid within 30 days of receipt of invoice.

## EXHIBIT E

### CORPORATE COMPLIANCE SMMC CODE OF CONDUCT (THIRD PARTIES)

Contractor recognizes and is fully dedicated to advancing SMMC's commitment to full compliance with all Federal, State, and other governmental health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements.

Contractor will comply with all Federal, State or other governmental health care program requirements.

Contractor, to the extent its contractual duties require it to submit the reports covered in this paragraph, will promptly submit accurate information for Federal health care cost reports including, but not limited to, the requirement to submit accurate information regarding acute available bed count for Disproportionate Share Hospital (DSH) payment.

Contractor will report to the SMMC Compliance Officer any suspected violation of any Federal health care program requirements within fifteen (15) days of discovery of the violation.

Contractor has the right to use the SMMC Disclosure Program by calling the Compliance Hotline at (800) 965-9775 or reporting incidents directly to the Compliance Officer. SMMC is committed to non-retaliation and will maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

Contractor understands that non-compliance with Federal and State health care program requirements, and failing to report any such violations, could result in termination of the Agreement and/or any other penalties as permitted by law.

Contractor is responsible for acquiring sufficient knowledge to recognize potential compliance issues applicable to the duties outlined in the Agreement and for appropriately seeking advice regarding such issues.

Contractor will not offer, give, or accept any "kickback," bribe, payment, gift, or thing of value to any person or entity with whom SMMC has or is seeking any business or regulatory relationship in relation to said business or regulatory relationship (other than payments authorized by law under such relationships). Contractor will promptly report the offering or receipt of such gifts to the SMMC Compliance Officer.

Contractor will not engage in any financial, business, or other activity which may interfere or appear to interfere with the performance of the duties under the Agreement or that involve the use of SMMC/County property, facilities, or resources.

Contractor will cooperate fully and honestly in the event that SMMC and/or County is audited by an outside agency including, but not limited to, compliance audits regarding enforcement of Federal and State regulations, any applicable accreditation standards, and/or SMMC system-wide policies.

***TO REPORT VIOLATIONS,  
CALL THE COMPLIANCE HOT LINE: (800) 965-9775***

Contractor, in executing this Agreement, certifies that an authorized representative has received this Code of Conduct, understands it, has authority to commit Contractor to this Code of Conduct, and has committed Contractor to comply with this Code of Conduct.

# ATTACHMENT I

## Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

a. Employs fewer than 15 persons.

b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R.

84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person: **Jose E. Martinez, VP, Human Resources**

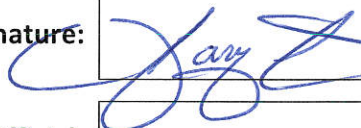
Name of Contractor(s): **San Francisco Lithotripsy, LLC**

Street Address or P.O. Box: **9825 Spectrum Dr., Bldg. 3**

City, State, Zip Code: **Austin, TX 78717**

I certify that the above information is complete and correct to the best of my knowledge

Signature:



Title of Authorized Official: **Vice President**

Date:

**4-18-2017**

\*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."