

Agreement No. \_\_\_\_\_

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND EMS DISASTER FELLOWSHIP, INC.**

This Agreement is entered into this first day of September 2020, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and EMS Disaster Fellowship, Inc., 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, the San Mateo County Emergency Medical Services Agency (EMS Agency) provides administrative and regulatory oversight for the local emergency medical services system; and

Whereas, California Health and Safety Code 1797.202 requires all local emergency medical service (EMS) agencies to appoint an EMS medical director (Medical Director) who is a licensed physician who has substantial experience in the practice of emergency medicine and have administrative experience in emergency medical services systems; and

Whereas, the Medical Director provides medical control for medical accountability throughout the planning, implementation, and evaluation phases of emergency medical services; and Whereas, it is necessary and desirable that Contractor be retained to provide the function of Medical Director for San Mateo County EMS Agency.

**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
- Attachment H—HIPAA Business Associate Requirements

**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 **FOUR HUNDRED FIVE THOUSAND**

**DOLLARS (\$405,000).** 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.

**4. Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from September 1, 2020 through August 31, 2023.

**5. Termination**

This Agreement may be terminated by Contractor or by the Chief of the San Mateo County 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. 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.

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

**11. 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 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.

#### **12. 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.

#### **13. Retention of Records; Right to Monitor and Audit**

(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.

**14. 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.

**15. 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.

**16. 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: Travis Kusman, MPH, Paramedic, EMS Director  
Address: 801 Gateway Blvd, Ste. 200, South San Francisco, CA 94080  
Telephone: (650) 573-2529  
Email: [Tkusman@smcgov.org](mailto:Tkusman@smcgov.org)

In the case of Contractor, to:

Name/Title: Gregory H. Gilbert, MD, FAAEM  
Address: 660 Sea Anchor Drive, Unit 2708, Redwood City, CA 94063  
Telephone: (650) 804-6579  
Email: [ghgilbert@me.com](mailto:ghgilbert@me.com)

**17. 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.

**18. Payment of Permits/Licenses**

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under 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: **EMS Disaster Fellowship, Inc.**

DocuSigned by: <i>Greg Gilbert</i>	6/15/2020   10:36 AM PDT	Greg Gilbert
<small>16F2EAAB81774CE...</small>		
_____ Contractor Signature	_____ Date	_____ 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, Amount and Method of Payment, Contractor shall provide the following services and duties will include, but not be limited to, the following:

#### **Administration:**

- 1) Provide medical oversight and direction to the emergency medical services (EMS) system, including but not limited to: EMS Agency staff, emergency medical dispatch, fire paramedic program, emergency and non-emergency ambulance services, patient destination, specialty care systems and all other emergency medical services elements.
- 2) Develop an annual work plan for review and discussion/approval with the EMS Director that identifies key clinical improvement projects, and ongoing clinical oversight and performance improvement activities, which shall be updated each year by September 30<sup>th</sup>.
- 3) Identify a work schedule that is mutually agreed to by the Contactor and the EMS Director that includes set number of EMS office hours based on operational needs.
- 4) Submit a monthly work invoice that identifies number of hours worked in mutually agreed upon categories, understanding that these may be adjusted over the term of the contract to meet both operational needs and workflow demands.

#### **Clinical Leadership:**

- 5) Provide leadership, medical oversight and actively participate in clinical quality improvement activities in the EMS system, including trauma, STEMI, Stroke and other specialty care systems. Develop medical protocols and policies using an evidence-based model for all components of the emergency medical services system and review annually or as needed to meet current standards.
- 6) Review EMS system clinical incidents weekly and make recommendations regarding both individual and overall performance improvements.
- 7) Direct clinical research relating to the emergency medical services system in the County with the EMS Director approval.
- 8) In major incidents, be prepared to provide medical direction and/or serve as a medical spokesperson and/or provide medical consultation to other divisions of the County Health System as requested by EMS Director.
- 9) Act as prescribing physician for Fire ALS services.
- 10) Provide clinical leadership to the San Mateo County Healthcare Coalition (Coalition) and serve as a liaison between the Coalition and medical directors/medical leadership at healthcare facilities.
- 11) Review and provide input on Coalition plans, exercises and educational activities to assure clinical accuracy and relevance.
- 12) Advocate and serve as a response for other clinical staff to encourage their involvement and participation in Coalition activities.

- 13) Review Coalition mass casualty/surge plans to support appropriate distribution (and redistribution) of trauma patients.
- 14) Strive to assure that subject matter experts are available, and a process exists to support secondary transfer prioritization in specialty surge (e.g. burn, pediatric) mass casualty situations.
- 15) Assist the Coalition in other areas and/or functions as requested by EMS Director.

**Overall Leadership, Interpersonal Relationships, System Change Agent:**

- 16) Participate in EMS Agency leadership team meetings as defined by the Contractor and EMS Director.
- 17) Attend EMS system meetings, as directed by the EMS Director, be on-time and be prepared to actively participate. Meetings will include but are not limited to STEMI Advisory Committee, Stroke Advisory Committee, Medical Advisory Committee, Executive Steering Council, Operations/Quality Leadership Committee and Emergency Medical Care Committee.
- 18) Represent the County at state and local meetings to include:
  - Emergency Medical Directors Association of California (EMDAC).
  - Trauma Committees (Bay Area Regional, San Francisco and Santa Clara Counties)
  - Others as agreed upon by both the Contractor and the EMS Director.
- 19) Be familiar with administrative and EMS legislation processes.
- 20) Act as emergency medical services liaison and change agent with local physicians and hospitals:
  - Participate with the EMS Director in meetings with hospitals to represent the EMS System with continued participation in "Get with the Guidelines", "CARES" and other data compliant systems to support overall system performance improvement activities.
  - Attend the Hospital Consortium Board meetings as requested to present EMS system clinical process improvement outcomes.

**Communication:**

- 21) Respond to all phone, text and email correspondence within one business day, unless Contractor has provided notification to the EMS Director of an extended time, they will not be available.
- 22) Submit a monthly work schedule to the EMS Agency Director.
- 23) Notify the EMS Agency Director when Contractor is not able to attend a regularly scheduled EMS meeting or when out of town or on vacation and not available for an extended period, as part of a monthly work schedule.
- 24) Identify any potential conflict of interests between the Contractors role and responsibilities as the EMS Agency Medical Director and any other potential conflict of interest, including financial conflicts associated with the medical director or their immediate family's financial interest in products or services that might be used by the EMS agency or their participants.
  - Do not wear logo clothing other than that provided by San Mateo County EMS Agency while performing the duties as identified in this agreement.
  - Recuse yourself from all contracting or other financial decisions where a financial conflict of interest exists.

**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:

- 1) Contractor shall submit to County, by the fifteenth (15th) working day of each month, a monthly invoice detailing work performed by Physician. Such invoice shall list work performed, meetings attended, products produced, and total billable hours worked per listed item per month. See attached Invoice worksheet. It is the intent of the parties that the Contractor will work approximately seven hundred (700) hours each year. This is approximately fifty-eight (58) hours per month or an average of thirteen to fourteen (13-14) hours per week for services rendered. It is understood that the weekly hours will have some variance depending on the system demands. For services listed above, County shall pay Contractor \$200.00 per hour, not to exceed **ONE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$135,000)** annually for period September 1, 2020 through September 30, 2023. In any event, the amount paid to the CONTRACTOR for services rendered shall not exceed **FOUR HUNDRED FIVE THOUSAND DOLLARS (\$405,000)** over the term of the contract.
- 2) All costs incurred under this Agreement shall be due and payable only after services have been rendered and a monthly invoice with billable hours is submitted and in no case in advance of such services. No costs shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement, are received, and approved by County as being in accordance with this Agreement. Indirect costs associated with providing services, such as administrative overhead and time spent preparing the invoice, are not billable to County.
- 3) All invoices shall follow the attached invoice/billable hour template and be accompanied by summary coversheet with the total hours, amount invoiced and the following language:

*Under the penalty of perjury under the laws of the State of California, I hereby certify that this invoice of services complies with all terms and conditions referenced in the Agreement with San Mateo County.*

Signature \_\_\_\_\_, Date \_\_\_\_\_

Title \_\_\_\_\_, Agency \_\_\_\_\_

- 4) As part of this agreement the County will pay directly for the Emergency Medical Director's Association of California, Inc. (EMDAC) annual dues up to a maximum of FIVE HUNDRED DOLLARS (\$500) per year for the duration of this Agreement.
- 5) As part of the agreement the County will provide medical mal-practice insurance to cover the scope of work identified in Exhibit B, upon Contractor completing the medical credentialing requirements of County Health.
- 6) In any event, the total amount to be paid by County to Contractor for services rendered and expenses incurred shall not exceed **FOUR HUNDRED FIVE THOUSAND DOLLARS (\$405,000)**.