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Professional Services Agreement

THIS PROFESSIONAL SERVICES AGREEMENT is made and entered into this thirteenth (1st) day of December, 2017, by and between Nye County ("County"), P.O. Box 153, Tonopah, Nevada 89049, and the Regional Emergency Medical Services Authority, a Nevada nonprofit corporation dba "Care Flight" ("Contractor"), 450 Edison, Reno, Nevada 89502, and collectively ("Parties").

WITNESSETH:

WHEREAS, County is a political subdivision of the State of Nevada organized pursuant to NRS Chapter 244.

WHEREAS, REMSA is a private non-profit provider of ambulance services and community health services in Northern Nevada.

WHEREAS, County is desirous of employing Contractor on a temporary basis to provide ground ambulance services ("Ambulance Services") to patients within the County, and the Contractor is qualified and desires to provide said services on the terms and conditions below. County and Contractor acknowledge discussions on a longer term agreement are ongoing, and this Agreement is intended to provide temporary services on an interim basis while terms and conditions of a longer term solution are negotiated.

NOW THEREFORE, it is hereby agreed by and between the Parties as follows:

- 1 **SCOPE OF WORK.** Contractor will provide the Ambulance Services set forth in Exhibit A attached hereto and incorporated herein by reference ("Services") for and on behalf of the County on a temporary basis during the term of the Agreement. The Ambulance Services under this professional services agreement will be provided in accordance with NRS 450B following a request for temporary Ambulance Services from the County. Ambulance personnel will function at the level of their certification and employment status with the Contractor utilizing Contractor's protocols. Contractor shall:
 - 1.1 Deliver the Services delineated in Exhibit A; and
 - 1.2 Provide the County with the management reports delineated in Exhibit D attached hereto and incorporated as a part of this Professional Services Agreement.
- 2 **PROVISION OF SERVICES.** The Parties agree that Contractor will designate a Project Manager for the work performed under this Professional Services Agreement, and Contractor may designate other persons to act as Project Manager by providing written notice to County. The Project Manager may assign other employees or agents of Contractor to carry out some or all of the Work under this Professional Services Agreement, but in such case, the Project Manager will be responsible for the supervision and predominance of those employees and agents.
- 3 **TERM AND EXTENSIONS.** Except as hereafter provided, Contractor shall commence

performance of this Professional Services Agreement upon receiving a Notice to Proceed, and shall perform the Services during the term of this Agreement. The initial term of this Agreement shall commence upon execution of this Agreement by all Parties and terminate on December 31, 2017. The term of this Agreement may be renewed by mutual agreement of the Parties.

4 SCHEDULE. Attached hereto as Exhibit C is the Contractor's estimated implementation schedule and milestones, which is approved by the County. Such schedule shall be updated on an as needed basis and submitted to the County for approval.

5 COMPENSATION. The Parties agree to the compensation terms delineated in Exhibit B attached hereto and incorporated as a part of this Professional Services Agreement. County acknowledges and agrees Contractor may, in addition to the compensation paid by County hereunder, bill and receive payment from patients and insurers for the Services provided. The Parties agree to the compensation terms delineated in Exhibit B attached hereto and incorporated as a part of this Professional Services Agreement in an amount not exceed \$XX.

6 INDEPENDENT CONTRACTOR. The Parties agree that Contractor, including any of Contractor's employees, agents or subcontractors is an independent contractor and that Contractor is not a County employee or agent of County, and, further, by explicit agreement of the Parties, there shall be no:

6.1 Withholding of income taxes by the County;

6.2 Workers' Compensation insurance coverage provided by the County;

6.3 Participation in group insurance plans which may be available to employees of the County;

6.4 Participation of contributions by either the Contractor or the County to the public employees retirement system on behalf of the Contractor or its employees, agents or subcontractors;

6.5 Accumulation of vacation or sick leave;

6.6 Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met;

7 TRANSFER/ASSIGNMENT/DELEGATION. The Parties hereto expressly agree that this Professional Services Agreement is a professional services contract, dependent upon the unique qualifications and abilities of Contractor. Contractor agrees that there shall be no transfers or participation in this Professional Services Agreement granted to any third party without written consent from County; provided, however, Contractor may assign this agreement to an affiliate of Contractor. Contractor shall neither assign, transfer nor delegate any right, obligations or duties under this Professional Services Agreement without prior written consent of County. No assignment of rights or delegation of duties of the Agreement shall be effective until the Assignee assumes in writing the obligations of the assigning Party, and delivers such written assumption to the other original Party to this Agreement. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the County and Contractor.

8 INDEMNIFICATION AND INSURANCE.

8.1 Contractor agrees to fully exonerate, indemnify and hold County harmless from and against all claims or actions, based upon or arising out of damage or injury (including

death) to persons or property caused by and/or sustained in connection with Contractor's negligent performance under this Professional Services Agreement, or the intentional misconduct of Contractor.

- 8.2 To the extent limited in accordance with NRS 41.0305 to NRS 41.039, County shall indemnify, defend and hold harmless Contractor from and against any and all claims or action from any act or failure to act by County or any of its officers or employees, which may occur during or which may arise out of the performance of this Professional Services Agreement. County will assert the defense of sovereign immunity as appropriate in all cases, including malpractice and indemnity actions. County's indemnity obligation for actions surrounding tort is limited in accordance with the provisions of NRS 41.035 to \$100,000.00 per cause of action.
 - 8.3 Contractor will maintain in effect, for the terms of this Professional Services Agreement, employers' liability insurance and workers' compensation, at not less than the statutorily required minimums, for any employees who may or will do any work under the provisions of this Professional Services Agreement.
 - 8.4 Contractor shall secure and maintain throughout the term of this Agreement professional liability insurance in the amount of Three Hundred Thousand Dollars (\$300,000) per claim and Five Hundred Thousand (\$500,000) per occurrence/aggregate for professional liability insurance.
 - 8.5 Contractor shall secure and maintain vehicle insurance on each vehicle used in carrying out this Agreement, with a combined single limit of One Million Dollars (\$1,000,000) for bodily injury and property damage.
 - 8.6 Contractor shall secure and maintain throughout the term of this Agreement workers' compensation insurance in the amount required by the State of Nevada for each employee, for any who performs work under this Agreement. The Contractor will maintain throughout the term of this Professional Services Agreement, employers' liability insurance and workers' compensation, at not less than the statutorily required minimums, for employees, if any who may or will do any work under the provisions of this Agreement.
- 9 COMPLIANCE WITH APPLICABLE LAW AND REGULATIONS.** During the term of this Professional Services Agreement and while performing the scope of work or otherwise acting on behalf of County, Contractor agrees to perform all terms and conditions of this Professional Services Agreement in a lawful manner and in conformity with all applicable laws and codes of the United States and of the State of Nevada, and all ordinances, rules, and regulations of the County and of any and all other competent public authority applicable to the performance of Contractor's duties. Failure by Contractor to comply with any applicable laws, codes, ordinances, rules and/or regulations constitutes a material breach of this Professional Services Agreement. County shall cooperate with and support Contractor where it is necessary for Contractor to secure additional regulatory approvals or waivers to provide the Services contemplated under this Agreement.
- 10 COMPLIANCE WITH LABOR LAWS.** Contractor will comply with all federal and state labor laws and will not discriminate against any person employed in the performance of this Professional Services Agreement because of race, sex, creed, color, physical or mental handicap, or national origin.

- 10.1 Contractor will take affirmative action to ensure that applicants for employment are not discriminated against on account of their race, sex, creed, color, physical or mental handicap, or national origin during the hiring process or their terms of employment. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.2 In the event that Contractor signs any subcontracts for the provision of Services under this Professional Services Agreement, Contractor shall include a provision requiring compliance with all federal and state labor laws and subsection 10.1 (above).
- 11 RECORDS.** Contractor shall maintain such records and accounts, including property, personnel, and financial records, as are deemed reasonably necessary by County to assure a proper accounting for all project funds consistent with the information identified in Exhibit B.
 - 11.1 Contractor will retain these records for at least four (4) years after the expiration of this Professional Services Agreement or after all other pending matters surrounding this Professional Services Agreement are closed, whichever is longer.
 - 11.2 Contractor shall permit and shall require its subcontractors to permit County to inspect all work, materials, payrolls, and other data and records with regard to the Services until the four (4) year period expires.
 - 11.3 Contractor shall collect and submit or otherwise make available to County, at such times as it may require, such financial statements, data, records, contracts, and other documents related to the Services as may be deemed necessary by County until the four (4) year period expires.
- 12 PUBLICATION.** The Contractor may publish results of its function and participation in Services, provided that prior written approval of County is obtained and that copies of each publication are furnished to County prior to publication.
- 13 COPYRIGHTS AND LICENSES.** If the Services performed by Contractor pursuant to this Professional Services Agreement result in a book, software application, customized templates or other copyrightable or licensable material, Contractor may during the term of the Agreement copyright or license the work and license the copyright or licensing over to County, with the Party ultimately receiving the copyright or licensing rights to the material to be determined at the end of this Professional Services Agreement, in Contractor's sole discretion.
- 14 PROHIBITED USE OF FUNDS.** Contractor shall not seek funds from County to be used either directly or indirectly to pay for bad debts; contingencies; contributions or donations; entertainment; fines or penalties; interest or other financial costs; unrecoverable costs under grant agreements; prosecution of claims against the federal government or taxes which County is not legally required to pay.
- 15 ORGANIZATIONAL CONFLICT OF INTEREST.**
 - 15.1 Contractor agrees to:
 - 15.1.4 Provide technical support to County consistent with the Services set forth in

Section 1, where applicable;

- 15.1.5 Refuse to solicit or perform any work for any other party or supply any information or analysis currently maintained by Contractor to any other party that could reasonably be expected to be used against County.
- 15.1.6 Refuse to seek to perform work, and to not actually perform work for others that would be contrary, or could reasonably be construed to be contrary, to County's best interests; provided, Contractor reserves the professional discretion with respect to decisions on providing medical care.
- 15.2 The provisions of this Section 15 shall be applicable during the terms of this Professional Services Agreement to Contractor and to any of Contractor's employees, agents or subcontractors.
- 15.3 County may grant a waiver to Contractor to perform certain tasks for other clients which may present a conflict of interest under this Professional Services Agreement if said waiver is approved in written form by the County and incorporated into this Professional Services Agreement as an addendum.
- 15.4 Contractor will, prior to execution of this Professional Services Agreement warrant by affidavit, attached hereto as Exhibit D that it is in compliance with this Section 15.
- 15.5 Contractor agrees that if it discovers an organizational conflict of interest with respect to this Professional Services Agreement, an immediate and full disclosure shall be made in writing to County, which shall include a description of the action which Contractor has taken or proposes to take, to avoid or mitigate such conflict. If such an organizational conflict is discovered, County reserves the right to terminate the Professional Services Agreement without prejudice if it deems such termination to be in County's best interests.
- 15.6 For breach of any of the above restrictions or for nondisclosure or for misrepresentation of any relevant facts required to be disclosed concerning this Professional Services Agreement, County may terminate the Professional Services Agreement for default and pursue such remedies as may be permitted by law. This subsection 15.6 does not limit any remedies set forth in Sections 20 and 21 (below).
- 16 CONFIDENTIALITY OF INFORMATION.** All information, data, analysis, developed software or reports generated by Contractor under the scope of this Professional Services Agreement shall be considered records of Contractor. The disclosure of all information, data, analysis, developed software or reports shall be subject to the provisions of Nevada Revised Statutes, Chapter 239 and other applicable law.
- 17 NON-DEBARMENT CERTIFICATION.** Attached to and incorporated into this Professional Services Agreement as Exhibit E is a Certification of Non-Suspension and Non-Debarment, which Contractor must sign before performing or receiving compensation under this Professional Services Agreement.
- 18 TECHNICAL CAPABILITIES AND LEVEL OF EFFORT.** Contractor commits to provide such professional capabilities as will be required to perform in a competent and professional manner under this Professional Services Agreement. Contractor shall perform its services to the standard of care of a reasonable contractor that is performing the same or similar work, at the same time and locality, and under the same or similar conditions faced by Contractor.

19 TERMINATION OF AGREEMENT WITHOUT CAUSE. Either Party has the right to terminate this Professional Services Agreement without cause by giving not less than ten (10) calendar days written notice to the other Party by U.S. Postal Service certified mail to the addresses listed on the signature lines of this agreement or by hand delivery of such notice to the other Party.

19.1 In the event of termination without cause by County, Contractor shall be compensated for all services rendered and expenses incurred up to the termination date, pursuant to the provisions of this Professional Services Agreement.

19.2 In the event of termination without cause by Contractor, County will be compensated either directly and/or in the form of a reduction in its outstanding obligation for all costs caused by Contractor's cancellation.

20 TERMINATION OF AGREEMENT WITH CAUSE.

20.1 This Professional Services Agreement may be terminated without prior notice by County if Contractor performs or fails to perform an action that constitutes a material breach. In lieu of termination, County may impose such sanctions as it may determine to be appropriate, including, but not limited to:

20.1.4 Withholding of payments to Contractor under the Professional Services Agreement until Contractor complies;

20.1.5 Suspension of the Professional Services Agreement in whole or in part; and/or

20.1.6 Charging to Contractor all costs caused by the breach.

20.2 In the event of termination without prior notice by County, County shall give written notice to Contractor as soon thereafter as is practicable by U.S. Postal Service Certified Mail to Contractor's address herein, or by hand delivery of such notice to Contractor.

21 AGREEMENT CONTINGENT ON FUNDING. Notwithstanding any of the other provisions of this Professional Services Agreement, it is agreed and Contractor acknowledges and understands that payment of compensation under the terms of this Professional Services Agreement is contingent upon availability of County funds. In the event that funds are not available for any reason, work under this Professional Services Agreement shall terminate immediately upon written notice to Contractor; and County shall have no obligation for payment of compensation under its terms except that Contractor will be paid for all services authorized and rendered and expenses incurred up to the termination date pursuant to the provisions of this Professional Services Agreement.

22 GOVERNING LAW, VENUE AND COST. This Professional Services Agreement shall be governed, construed and interpreted by, through and under the laws of the State of Nevada. The Parties hereby agree that venue for any and all disputes related to this Professional Services Agreement shall be in the Fifth Judicial District Court of the State of Nevada, in and for the County of Nye.

The Parties further agree that, should it become necessary for either Party hereto to take legal action to enforce any rights and/or obligations outlined herein, that the prevailing Party shall be entitled to recover their costs to the extent provided for by law, with each Party to bear their own attorney's fees unless otherwise provided for by law.

23 BANKRUPTCY. Under no circumstances shall this Professional Services Agreement or any of Contractor's rights hereunder, constitute an asset of the estate of Contractor or any

company in which Contractor holds an ownership interest, in bankruptcy or similar proceedings involving the insolvency of Contractor or such company.

- 24 **EXECUTION OF AGREEMENT.** This Professional Services Agreement may be executed in counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument.
- 25 **ENTIRE AGREEMENT.** This Professional Services Agreement constitutes the final and entire agreement between the Parties. The rights and obligations of the Parties shall be determined solely from the terms of this Professional Services Agreement, and any prior or contemporaneous oral agreements are superseded by and merged into this Professional Services Agreement.
- 26 **PRECEDING AGREEMENTS.** Upon full execution and implementation, this Professional Services Agreement supersedes and voids any and all other preceding Professional Services Agreements between Contractor and County relating to services to be performed under this Professional Services Agreement.
- 27 **AMENDMENT OF AGREEMENT.** This Professional Services Agreement cannot be varied or modified orally and may only be varied or modified by a written instrument duly executed by the Parties.
- 28 **SEVERABILITY.** If any provision of this Professional Services Agreement is held to be invalid, such invalidity shall not affect the validity of any other provisions of this Professional Services Agreement, which can be given effect without the invalid provision, and to this end the provisions of this Professional Services Agreement are declared to be severable.
- 29 **PERFORMANCE MANAGEMENT.** Contractor acknowledges that it is the desire of County to monitor and evaluate the Contractor's performance based on the "Contractor's Performance Indicators" attached to and incorporated into this Professional Services Agreement as part of Exhibit D and Contractor further agrees to fully cooperate with County in the performance monitoring process.
- 30 **Notices.** Any notices or other communications required or contemplated under the provisions of this Professional Services Agreement shall be in writing and delivered in person, evidenced by a signed receipt, or mailed by United States registered mail, return receipt required, to the addresses indicated below.

County

County Manager
County of Nye, Nevada
P.O. BOX 153
Tonopah, Nevada 89049

Contractor

General Counsel
Regional Emergency Medical Services Authority
450 Edison Way
Reno, NV 89502

IN WITNESS WHEREOF, the Parties do hereby execute this Professional Services Agreement on the latest date hereinafter appearing, binding themselves to the full performance of this Professional Services Agreement. This Professional Services Agreement shall not be binding upon Contractor's successors and assigns because of the nature of the professional services to be rendered hereunder.

County

By: _____

Name: _____

Title: _____

Date: _____

Contractor

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A. Services

The Ambulance Services under this professional services agreement will be provided in accordance with NRS 450.B following a request for temporary Ambulance Services from the County Manager or his designee. Contractor will provide Ambulance Services twenty-four (24) hours per day seven (7) days per week during the initial term. Ambulance personnel will function at the level of their certification and employment status with the Contractor utilizing Contractor's protocols.

Exhibit B. Compensation

Compensation for Ambulance Services is as follows:

Single resource	\$50.00 per hour
Fully staffed ambulance	\$135.00 per hour
Staff meal stipend	\$64.00 per day
Travel - Fuel	\$120.00 per round trip
Travel – Staff wage	\$400.00 per employee per trip

Contractor will submit an itemized invoice to County including logs and receipts where applicable. County agrees to reimburse Contractor within 30 day.

Exhibit C. Implementation Schedule

The initial implementation period under this professional services agreement is December 1, 2017 through December 31, 2017. Both parties must agree in writing to an extension beyond this initial implementation period. In addition,

- Contractor's Project Manager will arrive on December __, 2017 at __:00 p.m. and Ambulance Services will begin on December __, 2017 at __:00 p.m.
- Contractor will provide Ambulance Services twenty-four (24) hours per day seven (7) days per week during the initial term.
- Contractor's staffing schedule is available upon request.

Both parties must agree in writing to an extension beyond this initial implementation period.

Exhibit D. Management Reports

There are no management reports required under this agreement.

Exhibit E. Certificate of Non-Suspension and Non-Debarment

A certificate of non-suspension and non-debarment is not required under this agreement.

Single Provider per Week Cost Estimate

Description	Option 1	Option 2	Unit Cost	Option 1 Total	Option 2 Total
Single Resource	24	48	\$50.00	\$1,200.00	\$2,400.00
Fully Staffed Ambulance			\$135.00		
Staff Meal Stipend	1	1	\$64.00	\$64.00	\$64.00
Travel - Fuel (per round trip)			\$120.00		
Travel - Staff Wage (per employee per trip)	1	1	\$400.00	\$400.00	\$400.00
				\$1,664.00	\$2,864.00

