

Contract Number _____

THE STATE OF TEXAS

INTERLOCAL COOPERATION CONTRACT

COUNTY OF TRAVIS

This Contract is entered into by and between the Texas Department of Public Safety ("TXDPS" or "Department"), an Agency of the State of Texas, and the City of Austin, ("City") a municipal corporation (collectively "the Parties"). This contract is authorized pursuant to chapters 773 and 779 of the Texas Health and Safety Code, Chapter 791 of the Texas Government Code, and Chapter 157 of the Texas Administrative Code.

Each Party's monetary obligations, if any, are for the performance of governmental functions or services and are payable only from the current revenues appropriated and available for the performance of those functions or services.

I. CONTRACTING PARTIES:

The Receiving Agency: Texas Department of Public Safety

The Performing Agency: The City of Austin, through its Office of the Medical Director.

II. STATEMENT OF SERVICES TO BE PERFORMED:

The Department's Texas Division of Emergency Management ("TDEM") is the hub of Emergency Management for the State of Texas. TDEM's mission is to ensure the safety and well-being of its employees, the well-being of Department employees and the well-being of citizens of the State of Texas. TXDPS/TDEM desires to contract with the City such that the City, through its Office of the Medical Director ("OMD") shall provide medical oversight for all TDEM programs as required by state law, including, but not limited to the First Responder Organization ("FRO") and the Emergency Care Attendant and Tactical Medic Program.

The City shall provide services of a Medical Director and the associated responsibilities required for medical direction via the OMD to TXDPS, who shall oversee development and implementation of a new Automated External Defibrillator ("AED") program. The OMD consultation shall include review of policies and procedures to ensure appropriate skill sets for job applicants, training of TXDPS employees, credentialing and continuing education requirements for TXDPS employees where required for their job role. The City, through the

OMD, shall also provide direct physician supervision of the TDEM/TXDPS EMS personnel assigned to these programs.

The City, through the OMD, shall provide training for TXDPS personnel in Cardiopulmonary Resuscitation ("CPR"), AEDs and Continuing Education in such programs which require same.

TXDPS/TDEM shall ensure that:

1. TXDPS personnel, and personnel from any participating agencies shall assist in planning and engage in training exercises as determined by the City, through the OMD.
2. TXDPS personnel shall ensure that all appropriate employees attend all scheduled exercises.
3. Only TXDPS FRO personnel currently certified or licensed by the Texas Department of State Health Services ("DSHS") and credentialed by the Medical Director and the OMD, shall perform patient care when on scene. All TXDPS FRO personnel shall be identified by at least the following:
 - a. Agency affiliation;
 - b. Name of Individual; **and**
 - c. Level of credential.

System Credentialing Badges shall be worn or available for display by TXDPS FRO personnel providing direct patient care/procedures that require Medical Direction as defined by the Clinical Operating Guidelines ("COGs").

4. TXDPS First Responders (the "FRO") patient care shall be performed following the protocols and procedures approved by the OMD. The FRO, shall maintain as necessary the minimal equipment list included in the COG and provide all medical equipment and supplies used in patient treatment unless provided for in other agreements.
5. FRO shall respond according to the FRO's established response procedures for request for assistance. This response will be predicated upon the type venue and availability of Credentialed Providers and will be provided during established business hours of operation.
6. The FRO shall maintain a patient care reporting system that complies with a minimum data set designated by the OMD and listed in the COGs. A copy of the completed patient care reports shall be made available to the OMD within a reasonable amount of time or an agreed upon amount of time. The FRO shall maintain copies of all patient reports for a time period compliant with all applicable federal and state requirements.

7. The specific level of state certification or licensure of individuals involved in patient care shall be determined by the FRO, but shall be at a minimum an Emergency Care Attendant. The level of care provided by each individual shall be determined by the system credentialing requirements approved by the OMD. The Medical Director and the OMD has the responsibility and authority to determine the credentials of all individuals providing care under their direction.
8. The FRO and the OMD shall work together to develop, implement and maintain a system-wide Performance Management (PM) program. All parties agree to participate in a system-wide PM process, including the execution of all necessary Memoranda of Understanding for the exchange of Health Insurance Portability and Accountability Act (HIPAA) protected information. All parties further agree to participate in the System error reporting guidelines included in the PM program. Failure (individually or organizationally) to participate in the PM process may result in suspension of credentials to practice.
9. All system participants shall comply with all HIPAA requirements.
10. Individual providers and their FRO are responsible to report any arrests of the provider involving alcohol, drugs or a felony directly to the OMD or within three business days after the arrest is made. Failure to do so may result in immediate suspension of the provider. Reporting the event to certification and/or licensing agencies (e.g., DSHS or Board of Nursing Examiners (BNE)) is the responsibility of the individual provider and must occur in accordance with the specified Rules.
11. The parties shall not be responsible for care rendered, training, accidents, injuries, exposures, or any liability exclusively involving another party's personnel, equipment, supplies or vehicles.
12. Periodically, the OMD will designate continuing education (CE) as Mandatory or Emergent. If so designated, hours shall be provided at no charge to the FRO. The FRO shall participate fully in completing the CE within the time frame designated by the OMD. The CE video or CD will be provided at no charge, and the hours processed will be at no charge to the FRO.
13. FRO attendance is welcome, at no charge, at live continuing education sessions which may be scheduled throughout the term of the contract. CE hours processed from live continuing education sessions will be at no charge.
14. The FRO is responsible for acquisition and maintenance of its own equipment and supplies. The FRO shall have and maintain the appropriate medical supplies to provide care at their credential level in accordance with the Equipment and Supply Document submitted to the DSHS. procedures.

III. CONTRACT AMOUNT:

The total amount of this Contract shall not exceed fifty-nine thousand, seven hundred forty six and 50/100 dollars (\$59,746.50) for the three (3) year term. The yearly not-to-exceed amount is nineteen-thousand, nine hundred fifteen and 50/100 dollars (\$19,915.50).

IV. PAYMENT FOR SERVICES:

TXDPS shall pay for services received from appropriation items or accounts of TXDPS from which like expenditures would normally be paid, based upon vouchers drawn by TXDPS payable to the City.

V. INVOICING:

Payments for service performed shall be billed: monthly

INVOICES WILL BE SENT TO:

Texas Department of Public Safety
Accounts Payable
P.O. Box 4087
Austin, Texas 78773

With a copy to:
Texas Department of Public Safety
Division of Emergency Management
ATTN: Bradley Jacobs P.O. Box 4087
Austin, Texas 78773-0220

Invoices will be for professional services rendered that includes a list of services the OMD provides under the terms of the contract. Due to the variability in services rendered, there will not be an itemized detail of work provided.

V. CONTRACT ADMINISTRATION:

OMD Project Coordinator Contact Info

OMD Contract Point of Contact

Jeff Hayes, BS, LP
Chief of Staff
Office of the Medical Director
517 S. Pleasant Valley Rd
Austin, TX 78741
(512) 978-0002

Project Leader Contact Info

Contract Point of Contact

Richard Hooks
Chief of Staff
Texas Division of Emergency Management
Texas Department of Public Safety
5805 N. Lamar
Austin, Texas 78752
(512) 424-2436

VI. TERM OF CONTRACT:

This Contract is to begin on April 1, 2013 and shall terminate on January 1, 2016.

Two one-year extensions to this contract may be granted with prior written approval by the parties. Any extensions shall be at the same terms and conditions, plus any approved changes.

TXDPS may terminate this contract, without penalty, in whole or in part, if funds are not appropriated by the Texas Legislature or otherwise made available to TXDPS upon 60 days written notice to the City.

VII. GENERAL TERMS AND CONDITIONS:

Definitions: As used throughout this contract, the following terms shall have the meaning set forth below:

Abandonment or Default: If the City defaults on the contract, TXDPS reserves the right to cancel this contract without notice. If TXDPS defaults on this contract, the City reserves the right to cancel this contract without notice.

Amendments: This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are authorized by the governing body of each party, in writing, and signed by personnel authorized to bind each of the parties.

Audit: Performing Agency understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, TXDPS or any successor agency, to conduct an audit or investigation in connection with those funds. The City further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing access to any information the state auditor considers relevant to the investigation or audit. The City shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the City and the requirement to cooperate is included in any subcontract it awards.

Disallowed Costs: The City is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

Dispute Resolution: In accordance with Chapter 2261 of the Texas Government Code, the following Schedule of Remedies applies to this Contract in the event of substandard performance or other failure to conform to the requirements of this Contract or applicable law.

- (a) Reject the substandard performance and request corrections without charge to TXDPS.
- (b) Issue a notice of substandard performance or other non-conforming act or omission.
- (c) Request and receive the return of any over payments or inappropriate payments.
- (d) Reject associated reimbursement requests and suspends payments, pending accepted revision of substandard performance or non-conformity. Note: Funds may be retained by TXDPS for recovery of administrative costs or returned to funding source as authorized by agreements with the funding source, or by state or federal law.
- (e) Suspend all or part of this Contract, pending accepted revision of substandard performance or non-conformity.
- (f) Terminate this contract, and request as permitted by law return of all expended funds.

TXDPS may avail itself of any remedy or sanction provided in this Contract or in law to recover any losses arising from or caused by the City's substandard performance or any non-conformity with this contract or the law.

The City, through its Office of the Medical Director (OMD) shall carry on the Contract Activities and adhere to the progress schedule during all disputes or disagreements with TXDPS unless ordered to stop the Contract Activities. No Contract Activities shall be delayed or postponed pending resolution of any disputes or disagreements.

Neither payment by TXDPS nor any other act or omission other than an explicit written release constitutes a release of the City from liability for losses under this Contract.

Non-discrimination: The undersigned is subject to Title VI of the Civil Rights Act of 1964, Section 504 or Rehabilitation Act of 1973, Title II of the Americans with disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex or disability. Further, it is agreed that no individual will be turned away or otherwise denied access to or benefit from any program or activity that is directly associated with a program on the basis of race, color national origin, age, and sex (in educational activities) or disability. The prime contractor shall ensure that this clause is included in all subcontracts.

Proprietary or Confidential Information: The OMD will not disclose any information to which it is privy under this Contract without the prior consent of the agency, unless required by law.

Public Disclosure: Information, documentation and other material in connection with this contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code ("the Public Information Act").

Termination: This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.

Termination for Default: TXDPS may, by written notice of default to the City, terminate this Contract, in whole or in part, for cause if the City fails to perform in full compliance with the contract requirements, through no fault of TXDPS. TXDPS will provide a thirty (30) day written notice of termination to the City of intent to terminate, and TXDPS will provide the OMD with an opportunity for consultation with TXDPS prior to termination.

Upon receipt of written notice to terminate, the OMD shall promptly discontinue all services affected (unless the notice directs otherwise) and shall deliver or otherwise make available to TXDPS, copies or originals of all data, reports, summaries, and such other information and materials as may have been accumulated by OMD in performing this Contract, whether completed or in process. The City, through the OMD, will retain copies or originals of all information created or obtained by the OMD that is required to be maintained by law.

Termination for Convenience: Any party, with a thirty (30) day prior written notice to the other parties, may cancel this agreement.

Other Law: The OMD understands and agrees that by accepting money for services under this Contract, it will comply with all federal laws and regulations related to grants of federal funds under this Contract. As part of this agreement, The OMD will make the necessary certifications and agreements required, including but not limited to Appendices A attached herein and fully incorporated for all purposes.

The undersigned contracting parties do hereby certify that, (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the effected agencies of State Government, (2) the proposed arrangements serve the interest of efficient and economical administration of the State Government, and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

DRAFT

Appendix A

HIPAA MEMORANDUM OF UNDERSTANDING AND BUSINESS ASSOCIATE AGREEMENT

This HIPAA Memorandum of Understanding and Business Associate Agreement ("Agreement") is entered between:

City of Austin through its Office of the Medical Director (OMD) and the Texas Department of Public Safety ("TXDPS"), both referred to individually as "Party" or collectively as "Parties".

The Parties have entered into a First Responder Organization Interlocal Cooperation Agreement, effective date January 1, 2013, and the parties acknowledge and agree that, in providing emergency medical services, will receive Protected Health information ("PHI"), as defined in Section 14 below, from each other. Both parties agree to maintain the security and confidentiality of such PHI as required by this Agreement and as each Party is individually required by all applicable laws and regulations, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations adopted under HIPAA.

The Parties acknowledge and agree that disclosure is permitted for any of the following reasons:

- a. The parties are sharing PHI with each other while providing emergency treatment while on the scene and until the patient has been delivered to a hospital;
- b. For quality review and improvement purposes;
- c. The disclosure is pursuant to a patient's written authorization; or
- d. The disclosure is required by law.

Without limiting or expanding the applicability of the foregoing laws, the OMD and TXDPS enter into this Agreement.

1. **Permitted Use of PHI:** Each Party agrees that it shall not sue and shall ensure that its directors, officers, employees, contractors and agents, do not use PHI received from the other Party except as expressly permitted by this Agreement, or as required by law.

In addition, each Party shall not use or disclose any PHI to engage in any marketing activities; as such term is defined in Section 164.501 of Title II, Subtitle F, of HIPAA, 45 CFR, U.S. Code of Federal Regulations.

2. **Disclosure of PHI:**

- a. *Disclosure to Third Parties.* Each party agrees that it shall not and shall ensure that its directors, officers, employees, contractors and agents, do not disclose PHI received from the other Party to any other person (other than members of either Party's workforce as specified in subsection b. of this Section), unless disclosure is permitted by this Agreement or required by law.

To the extent that either Party discloses PHI received from the other Party to any other person, the Party must obtain the following, prior to making any disclosure:

1. Reasonable assurances from that other person that PHI will be held confidential as provided in this Agreement, and only disclosed as required by law or for the purposes for which it was disclosed to that other person; and
 2. An agreement from that other person to immediately notify the Party that disclosed the information of any breaches of these assurances of confidentiality, to the extent it has obtained knowledge of such breach.
- b. Disclosure to Workforce.* A party shall not disclose PHI received from the other Party to any member of its workforce unless that party has advised such person of that Party's obligations under this Agreement and of the consequences for such person and for the Party of violating them. Each Party shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI received from the other Party in contravention of this Agreement.
3. **Safeguards:** Each Party shall implement all appropriate safeguards to prevent use or disclosure of PHI received from the other party other than as required or permitted by this Agreement or as required by law. Each Party shall provide the other with such information concerning such safeguards as either Party may from time to time request. Upon reasonable request, each Party shall give the other Party access for inspection and copying to the Party's facilities used for the maintenance and processing of PHI received from the other Party, and to its books, records, practices, policies, and procedures concerning the use and disclosure of PHI received from the other Party, for the purpose of determining compliance with this Agreement.
4. **Accounting of Disclosures:** Each Party shall maintain a record of all disclosures of PHI received from the other Party other than disclosures that are made for the purposes of this Agreement. Each Party shall make available to the other Party the information required for such Party to provide an accounting of disclosures in accordance with the requirements of Section 164.528 of 45 U.S. Code of Federal Regulations. The record shall include the date of disclosure, the name and, if known, the address of the recipient, a brief description of the PHI received from the other Party that was disclosed, and the purposes of the disclosures.
5. **Reporting of Disclosures of PHI Received from Other Party:** Either Party shall, within five (5) business days (Monday-Friday, excluding holidays) of becoming aware of a use or disclosure of PHI received from the other Party in violation of this Agreement by its officers, directors, employees, contractors or agents, or by any other person to which it disclosed PHI received from the other Party, report such disclosure or use in writing to the Party from which it received the PHI and describe remedial action taken or proposed to be taken with respect to such use or disclosure.
6. **Agreements with any Other Person:** Each Party shall enter into an agreement with any agent or subcontractor that shall have access to PHI that the Party has received from the other Party in which such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Parties with respect to PHI.
7. **Disclosure to U.S. Department of Health and Human Services:** Each Party shall make its internal practices, books and records relating to the use and disclosures of PHI received from the other Party available to the Secretary of the United States Department of Health and Human Services, for purposes of determining compliance with HIPAA.

8. **Access by Individuals:** Each Party shall provide patients, or authorized patient representatives, with access to and/or copies of PHI received from the other Party within the time periods and in the manner required by HIPAA and by applicable state laws.

9. **Correction of PHI Received from Other Party:** Both Parties shall amend PHI received from the other Party that they maintain in accordance with HIPAA requirements.

10. **Amendment:** Upon the enactment of any law or regulation affecting the use or disclosure of PHI received from the other Party, or the publication of any decision of a court of the United States or this State relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either Party may, by written notice to the other Party, amend this Agreement in such manner as the requesting Party determines necessary to comply with such law or regulation. For OMD, notice shall be provided to: _____ For TXDPS, notice shall be provided to Richard Hooks, at 5805 N. Lamar Blvd, Austin, Texas 78752-4422.

If one of the Parties disagrees with any such amendment, it shall so notify the other Party in writing within thirty (30) days of receiving the requesting Party's notice. If the Parties are unable to agree on an Amendment within thirty (30) days thereafter, either of them may terminate this Agreement upon written notice to the other.

11. **Breach:** Without limiting the rights of the Parties pursuant to this Agreement, should either Party breach its obligations under this Agreement, the other Party may, at its option:

- a. Exercise any of its rights of access and inspection under Section 3 of this Agreement;
- b. Require the breaching Party to submit to a written plan of monitoring and reporting that the other Party determines is adequate to maintain compliance with this Agreement and provides to the other Party in compliance with the Notice provision in this Agreement; and such plan shall be a part of this Agreement; or
- c. Terminate this Agreement, if the non-breaching Party determines that the other Party has violated a material term of the Agreement, or if termination of the relationship is not feasible, report the breach to the Secretary of the United States Department of Health and Human Services.

Remedies under this section shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other remedy.

12. **Procedure Upon Termination:** Upon termination of this Agreement, each Party shall continue to extend the protections of this Agreement to PHI received from the other Party, and limit further use of the information to those purposes that make the return or destruction of the information infeasible.

13. **Definitions for use in this Agreement:**

- a. PHI means information that is a subset of health information, including demographic information collected from an individual, that:
 - i. Is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and

- ii. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present or future payment for the provision of healthcare to an individual; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and
 - iii. Is transmitted by electronic media, maintained in electronic media; or transmitted or maintained in any other form or medium.
- b. Required by law means a mandate contained in law that compels a person to make use of or disclosure of PHI and that is enforceable in a court of law. It includes court orders, and court-ordered warrants; subpoenas, or summons by a court, grand jury, a governmental or tribal inspector general, or an administrative authority to require the production of information, a civil or authorized investigative demand, and regulations that require production of information if payment is sought under a government program providing public benefits.

This agreement shall become effective on _____, 2013 and remain in effect until January 1, 2016.

Two one-year renewals may be granted with prior written approval by the Parties.

For The Office of the Medical Director:

BY: _____ Date: _____

PRINTED NAME:

Paul R. Hinchey, MD, MBA

TITLE

Medical Director

FOR Texas Department of Public Safety:

BY: _____ Date: _____

PRINTED NAME:

Steven C. McCraw

TITLE:

DIRECTOR