

AGREEMENT FOR EMS EMERGENCY TRANSPORTATION SERVICES

This agreement ("Agreement") is made and entered into this ____ day of _____, 2020, by and between the City of La Habra, a municipal corporation located in the County of Orange ("City") and Falck Mobile Health Corp., dba Care Ambulance Service, Inc., with principal offices at 1517 W. Braden Court, Orange, CA 92868 ("Contractor").

RECITALS

WHEREAS, Contractor is an ambulance provider which is fully licensed and otherwise qualified to perform the work required by this Agreement and was selected by City following evaluation of proposals received in response to issuance of a Request for Proposals; and

WHEREAS, City desires to utilize the services of Contractor to provide, and CONTRACTOR has indicated its willingness to provide primary ambulance transportation services, billing and collection, and other related services in accordance with the terms of this Agreement and the Contract Documents and in accordance with applicable federal, state and local laws;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained the parties hereby agree as follows:

1. Contract Document

The Contract Document constitutes the agreement between the parties. This Agreement contemplates that Contractor will do whatever is required to perform the work in accordance with the terms of the Contract Document and in accordance with any applicable governmental laws and regulations, whether specifically identified in the Contract Document or not.

2. Scope of Work

The details of the services to be provided by Contractor to City are described in detail in the Contract Document. Those services include but are not necessarily limited to the provision of the First Tier Service, the Second Tier Service, and Third Tier Mutual Aid Service (as those terms are defined below), together with patient billing and collection services, and the provision of any labor, material, supplies and equipment related to the provision of those services, and any other services described in the Contract Document (all of the services to be provided by Contractor pursuant to the Contract Document are collectively referred to as the "Emergency Services").

Contractor must perform the Emergency Services in accordance with the terms and conditions contained in this Agreement. If any of the terms and conditions of this Agreement are inconsistent with the terms and conditions contained in any other agreements between the parties, the terms and conditions in this Agreement will prevail.

A. The emergency transportation personnel assigned by Contractor to perform services under this Agreement are referred to as the "Transportation Personnel."

B. Without limiting Contractor's obligation to comply with all of its duties and obligations under the Contract Documents the Emergency Services to be provided by Contractor include but are not be limited to each of the following:

1. First Tier Service: The proposed contractor is required to provide dedicated staffing/Transportation Personnel and insurance for two (2) City-owned ambulances providing emergency transportation service out of Los Angeles County Fire Department (LACoFD) Stations No. 191 and No. 192, being able to respond 24 hours a day, 7 days a week to all emergencies as required (the "First Tier Service" or "First Tier").
 - a. The dedicated Transportation Personnel will be provided housing at LACoFD stations and drive two (2) vehicles provided by the City of La Habra. The Transportation Personnel will operate on the LACoFD's three (3) shift schedule (A, B, C) with four (4) EMT's and with at least two (2) drivers qualified per shift;
 - b. LACoFD, in cooperation with the Transportation Personnel, will provide on scene Advanced Life Support ("ALS") services. The Transportation Personnel will provide Basic Life Support ("BLS") services and transport patients to medical facilities when required.
2. Second Tier Service: In addition to the First Tier Service, Contractor will provide full and complete backup services for the City so that Contractor is able to respond 24 hours a day, 7 days a week to all 911 and other emergencies in the City as may be required. For example, when both dedicated BLS ambulances are assigned responses or out of service due to repair or maintenance, the backup service must include at minimum the following:

- a. Fully equipped and staffed vehicles provided by Contractor's own company ready to provide backup emergency transportation services to the City in the event the First Tier Service is unavailable or unable to respond to a 911 call (the "Second Tier Service" or "Second Tier"). The provision of these vehicles will be at no additional charge to the City.
3. Third Tier Mutual Aid Service: In addition to the above, Contractor is also required to enter into an agreement with a separate qualified ambulance service provider doing business in Orange County to provide backup services in the event both the First Tier Service and the Second Tier Service are unable to respond to a call for emergency transportation service (hereinafter "Third Tier Mutual Aid Contract," "Third Tier Mutual Aid Service" or "Third Tier"). The Third Tier Mutual Aid Contract must be approved by the City prior to provision of any service by Contractor. Such approval shall not to be unreasonably withheld by the City.
4. BLS and ALS Services: The Transportation Personnel assigned to perform services under this Contract, whether under the First Tier Service, the Second Tier Service, or Third Tier Mutual Aid Service, will provide Basic Life Support ("BLS") services and transport patients to medical facilities when required. LACoFD, in cooperation with the Transportation Personnel, will provide on scene Advanced Life Support (ALS) services.
5. All Transportation Personnel assigned to perform services under this Contract whether under the First Tier Service, the Second Tier Service, or pursuant to the Third Tier Mutual Aid Service, must at all times meet the following minimum qualifications as listed in Section 10, Personnel Rules, below.
6. The provision of the First Tier Service, the Second Tier Service, and the Third Tier Mutual Aid Service, together with all of Contractor's other duties and obligations under the proposed Contract, are jointly referred to as the "Emergency Services."

3. Contract Price and Payment

City will pay Contractor for furnishing the material and doing the prescribed work for the Agreement Term at the rates set out in Exhibit A hereto. All ambulance transport revenue will be retained by the City, with the Contractor receiving payment of a monthly cost for services as set forth in Exhibit A.

4. Term

- A. Effective Date. The effective date of this Agreement will be 12:00:01 a.m. on Tuesday, _____, 2020 ("Effective Date"), at which time Contractor will continue full responsibility for the provision of Emergency Services within the City under this Agreement.
- B. Initial Term. This Agreement is for an initial four (4) year term beginning on the Effective Date and ending on _____, 20___. Contractor will start providing the Emergency Services beginning at 12:00:01 a.m. on _____, 20___, and ending at midnight on _____, 20___ (the "Initial Term"). The contract will automatically expire at the end of the Initial Term unless extended as provided below.
- C. Extension. Upon the mutual written agreement of the parties, the term of this Agreement may be extended for up to an additional three (3), one (1) year periods, (for a potential combined seven (7) year total contract period). Successful past performance during the Initial Term will be a critical factor in the decision to grant an extension. The City decision to either grant or deny an extension(s) will be final. At the end of the Initial Term, or contract extension term(s), if granted, this Agreement will automatically terminate (the Initial Term together with any contract extension will hereinafter be jointly referred to as the "Term").

5. Termination

This Agreement may be terminated by the parties as follows:

- A. This Agreement may be terminated by either party, with or without Cause, upon ninety (90) days prior written notice to the other party.
- B. City may terminate this Agreement for Cause by providing Contractor seven (7) days' prior written notice of termination for Cause, and the factors constituting Cause.
- C. City may terminate this Agreement immediately if the La Habra City Manager and La Habra Police Chief (in their reasonable discretion) determine that continued operations by Contractor would constitute a danger to the public health, safety, or general welfare.

6. Breach of Agreement

- A. Factors Constituting Breach and Cause. Factors constituting a breach of this Agreement and also warranting Cause for termination include but are not limited to each of the following:

1. Repeated failure by Contractor to perform the covenants and requirements set forth in the Contract Documents in the time and manner specified, and as required by this Agreement.
2. Failure of Contractor to perform the Emergency Services in a manner which enables the City or Contractor to remain in compliance with the requirements of the County of Orange Emergency Medical Services Agency ("EMSA") ambulance ordinance, and related rules and regulations.
3. Supplying the City with materially false or misleading information during the course of producing any required reports to the City or LACoFD.
4. Willful falsification or unreasonable withholding of data supplied to the City or LACoFD during the Term of this Agreement, including but not limited to dispatch data, patient report data, response time data, financial data, or omission of other data required under this Agreement.
5. Repeated failure to meet the minimum vehicle deployment plan for ambulance service as described in this Agreement.
6. Repeated failure of Contractor's employees to conduct themselves in a professional and courteous manner, and to present a professional appearance.
7. Failure of Contractor to maintain all required vehicle maintenance schedules and records as set forth in this Agreement or as reasonably required by City or LACoFD.
8. Failure of Contractor to maintain all training and continuing education per the terms of this Agreement and LACoFD and EMSA policies and procedures and State regulations.
9. Contractor's failure or refusal to respond to any request by City or LACoFD concerning Contractor's operation of the Emergency Services in the City.
10. Transfer or assignment of controlling ownership or other interest in Contractor contrary to the terms of this Agreement, including but not limited to Section 12 of this Agreement ("Assignment").
11. Disruption of service due to failure to maintain ambulance maintenance schedule.
12. The lapse of any license, permit, or approval issued Contractor by a federal, state or local government, which license, permit or approval is/are reasonably necessary for the provision of the Emergency Services contemplated by the Contract Documents.

13. Contractor becomes insolvent or unable to pay its debts as they mature, or makes an assignment for the benefit of creditors, or suffers or fails to pay and discharge within ninety (90) days of entry, any final judgment (after exhaustion of any period of appeals), by any court in an amount of fifty thousand dollars (\$50,000) or more.
 14. Contractor files or there is filed against Contractor a petition to have Contractor adjudicated as bankrupt, or a petition for a reorganization or arrangement under any law relating to bankruptcy or insolvency.
 15. Contractor is enjoined or prohibited by any court of competent jurisdiction from performing services under this Agreement.
 16. The assets of Contractor are assumed by a trustee or other person pursuant to a judicial proceeding.
 17. Contractor breaches or defaults in the performance of any of Contractor's material duties or obligations arising under this Agreement involving the payment of money, and after receiving written notice thereof from City fails, within seven (7) days from receipt of such notice, to have fully cured and corrected such breach or default.
 18. Lapse of insurance required under this Agreement.
 19. Failure to manage and resolve citizen complaints to the reasonable satisfaction of the City or LACoFD.
 20. Repeated failure to meet the on-time performance criteria as set forth in this Agreement.
 21. The breach or default of or a failure to comply with, any material provision of this Agreement or any covenant specifically contained herein or incorporated by reference.
- B. Right To Cure. In the event of any dispute arising under this Agreement, the injured Party will notify the injuring Party, in writing, of its contentions by submitting a claim. The injured Party will continue performing its obligations hereunder so long as the injuring Party cures any default within thirty (30) days after service of the notice provided.

However, if a breach of this Agreement creates an immediate danger to the health and safety or general welfare the City, in the reasonable discretion of the City Manager, immediate action may be taken to remedy the breach itself or terminate this Agreement.

Notwithstanding the preceding, if the La Habra City Manager finds that Contractor is diligently proceeding with all steps necessary to cure such

default, the La Habra City Manager may, in his/her sole discretion, extend the time period by which Contractor must cure such deficiencies, including the effective date of such termination.

- C. Waiver. No waiver of any Event of Breach or Default will be valid or effective unless in writing, and signed by City. Any waiver of any one Event of Default or Breach will not constitute or be construed as creating a waiver of any other Event of Default or Breach.

- D. Action Following Termination. Should this Agreement be terminated for breach, Contractor agrees that City and/or LACoFD in their discretion may take immediate possession of any City or LACoFD materials, equipment, and supplies Contractor may have used in the performance of the Emergency Services. Notwithstanding the above, should this Agreement be terminated for breach, City will have the option, at the City's expense, subject to any right City may have to claim reimbursement from Contractor, to take over the delivery of emergency ambulance transport services itself using City personnel or Contractors, contract on a temporary emergency basis with other providers of emergency transport ambulance services, seek new proposals for service, or such other option as may be deemed necessary and legally available to City.

- E. No Limitation on City's Rights. Nothing in this section acts as any limitation upon the remedies available to City whether at law, or otherwise, in the event of a breach or default of this Agreement.

7. Insurance

- A. Prior to beginning the provision of Emergency Services under this Agreement, Contractor must provide to the satisfaction of the City and LACoFD certificates of insurance and endorsements evidencing the policy or policies of insurance in the types and amounts set forth below. Contractor will at all times during the term of this Agreement carry, maintain, and keep in full force and effect, the following minimum scope of insurance coverage:
 - 1. Commercial General Liability Insurance in an amount not less than \$3,000,000 per occurrence, written on an occurrence form. If policy carries an annual aggregate, such aggregate must be in an amount not less than \$6,000,000 per occurrence.
 - 2. Ambulance Medical Malpractice Insurance in an amount not less than \$3,000,000 per occurrence. If the policy carries an annual aggregate, such aggregate must be in an amount not less than \$6,000,000 per occurrence. Such insurance coverage may be combined with either the general or automobile liability coverage required herein, provided, however, if the

insurance coverage is so structured, the combined coverage must be in an amount not less than \$5,000,000 per occurrence with an annual aggregate of not less than \$10,000,000.

3. Comprehensive Business Automobile Liability Insurance in an amount not less than \$3,000,000 per occurrence, covering owned, non-owned, and hired vehicles written on an occurrence form. If policy carries an annual aggregate, such aggregate will be in an amount not less than \$6,000,000 per occurrence. Contractor will be required to provide this insurance to all City owned Tier One vehicles and Contractor owned Tier Two vehicles. In addition, Contractor will insure that all Tier Three vehicles operating pursuant to this Agreement comply with these insurance requirements.
4. Workers Compensation and Employers Liability Insurance in a statutory amount for workers' compensation and in an amount not less than \$1,000,000 for employer's liability. This insurance must contain a waiver of subrogation clause in favor of the City and LACoFD and their respective officers, officials, employees, and agents.

B. Contractor will also comply with the following requirements:

1. If the above required insurance coverage does not provide for an annual aggregate which is twice the per-occurrence limit, in the alternative, the insurance policy (policies) must be amended (by appropriate ISO endorsements) so that the policy limits apply solely to this Agreement.
2. The above required liability insurance will be in a form which supports coverage for the provisions of the indemnification clause required under this Agreement including a claim brought against the City and/or LACoFD for the injury to, or death of, an employee or agent of Contractor.
3. In the event of a claim (or claims) against the above referenced liability policies which reasonably may deplete one half or more of the aggregate limits, Contractor must immediately notify City. In the event a claim (or claims) are made against the above referenced liability policies which are reasonably expected to deplete 90% of the aggregate limits, Contractor will, at Contractor's expense reinstate the aggregate limits at least to an amount equal to one half of the face amount of the aggregate limits on the policies.
4. All insurance required herein must be written by insurers admitted to do business in the State of California, rated A, Class X, or better in the most recent Best's Key Insurance Rating Guide.

If Contractor can demonstrate to the City's satisfaction that coverage is not available in the admitted market, City, in its sole and absolute discretion, may be willing to consider coverage provided through a surplus line earner. In such case, the insurer providing the surplus line coverage must be represented by

a California licensed surplus line broker, must be on the California list of eligible surplus line insurers, and must be rated A Class X or better in the most recent Best's Key Insurance Rating Guide.

5. No insurance required herein will provide for a deductible in excess of \$5,000 or a self-insured retention in any amount without prior written consent of the City, and the granting or denying of such consent will be at the sole and absolute discretion of the City.

C. Endorsements

1. All insurance required herein must be endorsed to state that Coverage will not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
 2. The liability policies required herein, except for professional liability (if a stand-alone coverage) and employers liability must, by endorsement, contain the following provisions:
 - a. "The City of La Habra and LACoFD, and their respective officers, officials, employees, representatives, and City or LACoFD designated volunteers are hereby declared to be additional insureds as respects the operations, activities, work, errors or omissions of the named insured arising out of or in connection with any contract or agreement with the City of La Habra."
 - b. "This insurance is primary to and will not contribute with any insurance or self insurance maintained by the City of La Habra or any of the designated additional insureds."
 - c. "This insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability."
 3. Worker's Compensation policies must be endorsed to state that the insurer waives all rights of subrogation against the City and LACoFD and their respective officers, officials, agents, employees, and volunteers for losses arising from work performed by the Contractor under this Agreement.
- D. All insurance coverages will be confirmed by execution of endorsements and certificates of insurance. Contractor is required to file the completed policy endorsements and

certificates with City and LACoFD on or before the Effective Date of this Agreement, and to thereafter maintain current endorsements on file with City and LACoFD. The completed endorsements and certificates of insurance are

subject to the approval of City and LACoFD.

- E. Nothing in this section will be construed as limiting in any way, the Indemnification and Hold Harmless clause contained herein in this Section, or the extent to which Contractor may be held responsible for payments of damages to persons or property.
- F. City or LACoFD (with the City's approval) have the right at any time to review the coverage form, and limits of insurance required herein. If, in the sole and absolute discretion of the City and/or LACoFD, the insurance provisions in this Agreement do not provide adequate protection for the City and/or LACoFD, the City and/or LACoFD has the right to require Contractor to obtain insurance sufficient in coverage, form, and limits to provide adequate protection, and Contractor must promptly comply with such requirement. The City's and LACoFD's requirements will not be unreasonable, but will be adequate in the sole opinion of the City and LACoFD to protect against the kind and nature of risks which exist at the time a change of insurance is required or thereafter.
- G. Alternate forms of insurance that meet the above requirements must be approved by the City's and LACoFD's Risk Manager prior to beginning any work under this Agreement.

8. Indemnification

Contractor agrees to defend, indemnify, and hold free and harmless the City and LACoFD, and their respective officers, officials, agents, and employees at Contractor's sole expense, from and against any and all claims, actions, suits, or other legal proceedings brought against the CITY or LACoFD, or their respective officers, officials, agents or employees arising out of Contractor's, its employees', agents', and/or authorized subcontractors' (collectively Contractor"), performance of its obligations under this Agreement or out of the operations conducted by Contractor, except for such loss or damage arising from the sole negligence or willful misconduct of the City or LACoFD.

The defense obligation provided for hereunder will apply without any advance showing of negligence or wrongdoing by the Contractor, but is required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions, or misconduct of the Contractor and/or whenever any claim, action, complaint or suit asserts liability against the City or LACoFD, or their respective officers, officials, agents or employees based upon the work performed by the Contractor under this Agreement whether or not the Contractor is specifically named or otherwise asserted to be liable.

9. Operational Standards, Procedures and Performance Requirements

Contractor must comply with the following Operational Standards, Procedures and Performance Requirements during the Term of the Agreement, all costs of which shall be fully borne by Contractor, and are included in the compensation paid by City to Contractor pursuant to Section 3 of this Agreement:

A. Emergency Response Communications System

1. **Communications Requirements.** Contractor must comply with the following requirements concerning the installation, use, operation, and maintenance of its Emergency Response Communications System:
 - a. Emergency Response Communications System must be operated and maintained by Contractor twenty-four (24) hours per day, seven (7) days per week;
 - b. Contractor dispatch centers must be equipped with a secondary, emergency back-up electrical system to insure uninterrupted twenty-four (24) hour service;
 - c. Contractor must provide and maintain, at its sole cost and expense, a dedicated point to-point communications link between the LACoFD Emergency Communications Center and the Contractor's ambulance dispatch center. Such link may be via a dedicated ring down line, CAD (Computer Aided Dispatch) interface or other communications media deemed acceptable by City and LACoFD; and
 - d. The City of La Habra owns the First Tier ambulances used to supply service within the contract area. The ambulances are currently equipped with LACoFD radios and MOT's (Mobile Data Terminals) capable of communicating with LACoFD dispatch. Contractor will be expected to operate the equipment currently in place pursuant to the guidelines established by the City of La Habra and LACoFD. For all Second Tier ambulances, Contractor will be required to install such radios as deemed necessary by LACoFD and the City of La Habra to effectively establish radio communications links with police and/or fire personnel on such channels and frequencies as defined and allowed by either LACoFD or La Habra PD.

B. Contractor Services

1. Service. Contractor must provide at a minimum:
 - a. Dedicated Transportation Personnel to fully staff the two (2) First Tier Service ambulances such that those two vehicles are able to provide twenty-four (24) hour emergency ambulance transportation within the City, seven (7) days a week, for the duration of the Term of this Agreement;
 - b. A sufficient number of fully equipped backup units under the Second Tier and Third Tier Service such that Contractor is able to respond to all 911 and other emergency calls in the City and meet the response time requirements set forth in Section 9C below;
 - c. During the term of the Agreement, Contractor will provide sufficient resources such that Contractor is able to respond to 100% of all 911 and other emergency calls in the City by means of the combined efforts of the First Tier Service, Second Tier Service and Third Tier Mutual Aid Service;
 - d. The Transportation Personnel for the First Tier Service will be housed at LACoFD fire stations (No. 191 and No. 192) utilizing City provided dedicated vehicles;
 - e. The City will provide two (2) dedicated vehicles and a back-up ambulance;
 - f. Contractor must provide and maintain First Aid Kits in each City Department located within La Habra City Hall (City Administration, Finance, Human Resources, Public Works-Engineering, Information Technology and Community Development), as well as the La Habra Police Department, the La Habra Community Center, the Public Works Department Service Yard, the La Habra Children's Museum and additional sites as agreed upon by Contractor and City. Maintenance of the kits will be as agreed upon by Contractor and City, but will not be less than two times annually.
 - g. Contractor must engage in "Community Involvement" to the degree required by City. Community Involvement will be deemed to be a visible and interactive presence at events designated by the City where Contractor will have equipment and personnel present to enhance the public image and mission of the City Ambulance Service as well as to promote community safety and the timeliness of emergency response. Such public events will include, but are not limited to, the La Habra Corn Festival, 4th of July Community Celebration, Citrus Festival, and Tamale Festival.
 - h. Contractor must provide Cardio Pulmonary Resuscitation (CPR), basic first aid and AED training to police personnel, city staff, and emergency response personnel as designated by the City and in compliance with Peace Officers Standards and Training (POST) regulations. Such training will be conducted at locations specified by City and at time(s) as

agreed upon by Contractor and City.

- i. The City will use the services of Contractor for purposes of billing for all pre-hospital ambulance services, including Tier One, Tier Two and all other required ambulance responses within the City of La Habra. For these services, Contractor will assess the City a fee of 6.5% of the total amount collected by Contractor on behalf of City. Contractor is also responsible for collection of payment on delinquent accounts. Contractor may use the services of a subcontractor for delinquent account collection; however, in no case will the amount of the service fee exceed 6.5% of the amount received. City will continue to administer all aspects of its Ambulance Subscription Program and retain all funds associated with the program.
- j. City will retain the right to resolve or adjudicate disputes with clients as to the propriety of billing. Contractor will work with City to ensure that disputed amounts are resolved in a timely, equitable, and fair manner.
- k. Contractor has established a cost of living increment for the benefit of its employees. In the event that the cost of living pay increase is not accorded employees of Contractor, the City will have the amount of the monthly contract assessment reduced in the amount that would have been attributed to the cost of living increase.
- l. Contractor must have an authorized field supervisor available to the City and LACoFD personnel, either by radio or in person, on a twenty-four (24) hour, seven (7) day per week basis during the Term of the Agreement.

C. Response Times

1. General Requirements. The initial dispatch of Contractor personnel will be made by LACoFD. Response times will be calculated as the actual elapsed time in minutes from the moment the request is received by the Contractor to the time that the Contractor's first ambulance arrives on scene. Where multiple ambulances are dispatched to the same emergency scene, only the response time of the ambulance arriving first will be counted for purposes of calculating the response time.
2. Response Time Measurement. Response times are measured in full minutes, rounded upward. For purposes of measuring compliance and for the imposition of any penalties, any partial minute will be rounded up to the next full minute. For example, a response time of 10:01 or 11:00 is counted as eleven minutes.
3. Response Times Required Contractor agrees to use its best efforts to achieve response times that achieve arrival on scene after receiving a call for service at a quarterly compliance rate of ninety-two percent (92%) in each Code 2 and Code 3 category as noted below:

Metro/Urban Requirements

- a. Code 3 Response time must not exceed ten (10) minutes zero (0) seconds.
 - b. Code 2 Response time must not exceed fifteen (15) minutes zero (0) seconds.
4. Response Time Reporting. Contractor must provide quarterly response time reports to the City ("Quarterly Response Time Reports") for the first tier, second tier, and third tier services as outlined in the scope of services section. Contractor will be required to obtain the first-tier reports from LACoFD due to the fact that LACoFD directly dispatches first-tier ambulances in La Habra. It will be Contractor's responsibility to review the first-tier response reports from LACoFD for purposes of identifying errors or omissions. Such first-tier reports will then be forwarded to City in conjunction with the second-tier and third-tier quarterly reports.
 5. Call Cancellation In the event a call for service is cancelled prior to arrival, the response will be considered to be within the response time requirement so long as the elapsed time between the call for service and the cancellation does not exceed the applicable response time requirement. In the event the elapsed time between the call for service and the cancellation is in excess of the applicable response time requirement the call will be considered late.
 6. Quarterly Response Time Report Format. The Quarterly Response Time Reports must be submitted by Contractor using an electronic spreadsheet format. Whenever response times in either Code 2 or Code 3 categories fall below the 92% compliance rate in any given quarter, Contractor will include a narrative assessment as to the cause of any response delay and if requested will meet and confer with the City Manager or designee for purposes of establishing a plan for avoiding such delay in the future.
 7. Exemptions to Response Time Requirements. The response time requirements set forth in this Section may be suspended and not enforced, at the sole discretion of the City in unusual circumstances. There will be no exemption for response delays due to vehicle mechanical problems, driver error, traffic, weather, or mistake. The response time requirements set forth in this Section will be suspended and not enforced under the following limited circumstances:
 - a. High Call Volume. Responses to calls for service during periods of unusual system overload or high call volume which will be determined at the sole discretion of the City;
 - b. Disasters. Responses to calls for service during a LACoFD or City-declared disaster occurring during a declared disaster in a neighboring jurisdiction, which has requested emergency ambulance transportation or other mutual aid assistance from LACoFD or the City. For purposes of this Section, a ' declared

disaster' means any condition of disaster as declared or affirmed by the City or LACoFD Fire Chief or his designee;

- c. Multiple Ambulance Response. For responses to calls for service where more than one ambulance is dispatched to the same incident, only the response time of the ambulance first to respond will be required to meet the specified response time requirements;
 - d. Response Up/Downgrade. For Code 3 calls where the response priority code is downgraded to Code 2 by LACoFD while the ambulance is en route to the scene, the response time standard for that call will be recorded as a Code 2 call. If the response priority code is upgraded from Code 2 to Code 3 by LACoFD while the ambulance is en route to the scene, the response time standard for that call will be recorded as the number of minutes for a Code 3 call plus the number of minutes already elapsed not to exceed the original total minutes for a Code 2 call.
 - e. Return of LACoFD Personnel. In the event that an ambulance is delayed in responding to a call for service or is hindered from providing a timely response due to the need to comply with the requirement that it return all LACoFD personnel to their respective fire stations as described herein, the response time requirement for that call will be suspended. This exemption will only apply for a call for service dispatch that occurs while the ambulance is waiting for or actually returning LACoFD personnel. It will be the Contractor's responsibility to document such circumstances, including the length of time and the affected call(s) for service. Contractor must apply for a specific exemption as provided below. Calls for service dispatches that occur after the ambulance has returned LACoFD personnel and while returning to any ambulance post location are not eligible for this exemption.
 - f. Dispatched to incorrect location. In the event that an ambulance is dispatched to an incorrect location, it is the Contractor' s responsibility to document such circumstances.
8. Procedures to Request Response Time Exemption. Applications for receiving an exemption to the response time requirements must be submitted by Contractor to the City for approval. Such requests must accompany the Quarterly Response Time Report for the period in which the exemption is requested. Requests for exemptions outside of the current quarterly reporting period will not be considered. Each request for exemption must include the following information (a) the incident date (b) the LACoFD Incident Number(s), (c) a narrative summary of the incident, (d) explanation for the cause of the response time delay, and (e) the specific exemption requested. The decision to either grant or deny a response time exemption request will be made by the City within thirty (30) days. The decision to deny may be appealed to the La Habra City Manager or his designee, whose

decision will be final.

9. Use of Alternative Methods to Meet Response Time Requirements. For purposes of maintaining compliance with the response time requirements established herein, Contractor must negotiate and enter into a separate Third Tier Mutual Aid Contract with a neighboring ambulance service operator for the provision of emergency transportation services (Mutual Aid Provider). Any ambulance provider selected to provide such services and any agreement to provide such services pursuant to this Section, must satisfy the following requirements:

- a. The Third Tier Mutual Aid Contract must be reviewed and approved by the City prior to execution of the Contract awarded and a copy of the Third Tier Mutual Aid Contract must be sent to the City and the LACoFD EMS Section Battalion Chief. Such approval by the City shall not be unreasonably withheld.
- b. Mutual Aid Providers will be expected to provide emergency transportation services in the City in accordance with all of the operational standards, procedures, and performance requirements set forth in the Contract Documents. Prior to Contractor providing any Emergency Services under the Contract, the Mutual Aid Provider must acknowledge this obligation in writing to the City.
- c. Mutual Aid Providers and their employees must cooperate with the City and LACoFD and must participate in any audit requested by the City concerning their performance; and
- d. Notwithstanding the above, Contractor, and not the Mutual Aid Provider, will be primarily responsible for ensuring compliance with all terms, conditions, standards, and performance requirements set forth in the Contract Documents, including but not limited to, the primary obligation to pay any penalties which may be imposed by the City, and the payment of all fees and reimbursements.

10. Disciplinary Actions for Failure to Meet Response Time Requirements/Performance Deficiency

- a. Meet and Confer. Should Contractor fail to meet the response time requirements set forth in this section in any quarterly period, either for any single Code category or for the cumulative total of Code 2 and Code 3 calls as outlined in section C.3 of this Agreement, the City of La Habra representative will notify the Contractor and meet and confer with said Contractor regarding performance and response time deficiencies. The purpose of this meeting is to notify the Contractor of its deficiencies and to work with the Contractor to ensure proper response time performance in the immediate future.

b. Corrective Action Plan. Situations which come to the attention of, or are reported to the City and/or LACoFD EMS Section Battalion Chief, and which appear to constitute a Contractor service or performance deficiency or substantial inadequacy as determined by the City, will be immediately investigated by the City. At the discretion of the City, a Corrective Action Plan may be imposed on the Contractor to correct identified and verified performance deficiencies and inadequacies. The City authorized representative will meet to develop a written Corrective Action Plan (CAP) within fifteen (15) working days of the identification and verification of the service or performance deficiency or substantial inadequacy in accordance with the following CAP requirements:

1. CAP Format. The CAP will describe the following: (1) the service or performance deficiency, or substantial inadequacy will be identified, and (2) the method by which Contractor is to correct the service or performance deficiency or substantial inadequacy will be outlined. Contractor must sign the CAP, thereby agreeing to the corrective action set forth in the CAP with any areas of disagreement noted in writing. A copy of the signed CAP will be furnished to Contractor at the conclusion of the CAP meeting.
- 2.. Correction Period. Correction of the service or performance deficiency or substantial inadequacy will occur within a period of not to exceed thirty (30) days from the development of the CAP unless the City representative determines that correction cannot be accomplished within the specified time frame. When correction will take longer than thirty (30) days from the development of the CAP, the CAP will specify interim dates by which specific steps toward correction of the service or performance deficiency, or substantial inadequacy will take place with the total time period not to exceed three (3) months.
3. CAP Inspection/Compliance. The City Manager or his designee, will visit and inspect Contractor's business office, facilities, vehicles, personnel, and/or records, to review and document actions taken by Contractor to implement the CAP, and will document any continuing service or performance deficiency or substantial inadequacy, which is not corrected within the specified time frame. In the event Contractor fails to correct the service, performance deficiency, or substantial inadequacy identified in the CAP within the time frame provided, LACoFD and/or the City, if applicable, may find Contractor to be in material breach of the Agreement.

c. Timely Performance Required

1. Imposition of a CAP pursuant to this Section will not relieve Contractor of the responsibility to meet all performance expectations as set forth in the

Contract Documents. Substandard cumulative response time performance (i.e., below the 92% compliance rate for combined Code 2 and Code 3 calls) in any two (2) quarters in a single twelve (12) month period may constitute breach of contract, resulting in the imposition of a Remedial Action Plan (RAP).

2. Failure to timely correct and cure any response time deficiency after having been given notice and a reasonable opportunity to cure such violation in accordance with an established Corrective Action Plan (CAP), or failure to cure a breach of contract after the imposition of a Remedial Action Plan (RAP), may constitute a material breach of the Agreement. Additionally, consistent problems in meeting and/or maintaining the response time requirements will be a key factor in determining whether to grant contract extensions. This Agreement requires the highest levels of performance, reliability, and compliance with the established performance criteria and service delivery criteria, and the mere demonstration of effort even diligent and well-intentioned effort will not substitute for proper compliance.

D. Emergency On-Scene Procedures

1. Contractor must perform as a part of the patient care team and must be able to perform all BLS treatment modalities within their scope of practice, as required by OCEMSA.
2. All ambulance Transportation Personnel assigned by Contractor to perform Emergency Services under the contract must:
 - a. Be trained in Orange County EMS protocol and procedure;
 - b. Work under the direction of the LACoFD Incident Commander and/or the LACoFD EMT Paramedic in charge of the patient(s) and/or incident;
 - c. Fully cooperate with and abide by the instructions of the LACoFD Incident Commander and/or the LACoFD EMT Paramedic in charge of the patient(s) and/or incident;
 - d. Place their apparatus and equipment at the scene in a safe location or as deemed appropriate by the LACoFD Incident Commander and must be mindful of the need for safe operations, including the avoidance of exhaust fumes;
 - e. Not interfere with or assist LACoFD personnel in any firefighting or emergency rescue operation;
 - f. Request a secondary ambulance and/or field supervisor immediately upon determining that their unit has suffered a mechanical failure or is or may become disabled, or upon the request of an LACoFD Incident Commander, and must likewise immediately inform the LACoFD Incident Commander of any mechanical failures and;
 - g. Be aware that safety is the responsibility of all personnel on scene.

Ambulance personnel will not enter or operate in unsafe environments.

D. Disaster Assistance

During a disaster declared locally or in a neighboring jurisdiction, strict application of the performance standards set forth in the Contract Documents may be temporarily suspended by the City in order to provide an appropriate response. While disaster coordination will be provided by LACoFD, Contractor is expected to be actively involved in the planning and response to any declared disaster. Upon notification of a disaster by City and/or LACoFD, Contractor must immediately commit any and all available resources and assist LACoFD and the City in accordance with disaster plans and protocols applicable in the locality where the disaster has occurred. In the event of a disaster the following will apply:

1. During such periods Contractor will be released from the response time requirements until notified by the City and/or LACoFD Duty Officer that disaster assistance is no longer needed;
2. When disaster assistance is no longer needed, Contractor must resume performance pursuant to the Contract Documents as quickly as is practical considering personnel exhaustion , medical supply restocking needs, and other relevant considerations;
3. While performing disaster assistance, Contractor will provide supervisory assistance at the command post or emergency operations center as requested and is to use best efforts to provide local emergency coverage. Contractor must also suspend non-emergency transport services as necessary, informing persons requesting non-emergency transport of the reason for the temporary suspension; and
4. During the course of a disaster, LACoFD and/or the City will work with Contractor to utilize mutual aid providers who are authorized to perform such services within the County to meet the service demands of the disaster.

E. Standard of Performance

Contractor must perform all work and services pursuant to the Contract Documents in a skillful and workmanlike manner and consistent with the standards generally recognized as being employed by professionals in the private, emergency ambulance transportation field in the State of California. Contractor must warrant that it and its employees are skilled in the professional calling necessary to perform all work and services under the Contract Documents. Contractor must warrant, and from time to time may be required by the City to demonstrate, that all employees and authorized subcontractors have sufficient skill and experience to perform the work and services assigned to them under the Agreement. Finally, Contractor must further represent that it and its employees and authorized subcontractors have all licenses ,

permits, qualifications and approvals of whatever nature that are legally required to perform the work and services under the Agreement and that such licenses and approvals will be maintained at all times during the Term of the Agreement.

Adherence to the LACoFD emergency transport guidelines as directed by LACoFD personnel will also be used as part of the overall performance criteria.

F. General Provisions

1. Return of LACoFD Personnel. LACoFD provides Advanced Life Support ("ALS") services from a variety of delivery platforms, including engine and truck companies. In cases where LACoFD personnel accompany patients in the ambulance en route to hospitals or to other receiving facilities and the LACoFD ALS unit does not follow up to the hospital/receiving facility, Contractor must return those personnel to their assigned fire station(s) within 30 minutes from the conclusion of the run. The conclusion of the run is defined as the moment when the patient has been transferred into the care of hospital/medical staff, the ambulance crew has completed all required documentation, and the ambulance has been restocked and is ready to be placed back in service. At the conclusion of the run, the ambulance crew is to advise the accompanying LACoFD personnel that they are ready to return them to their station. If while returning LACoFD personnel to their station, the ambulance receives another emergency call, the ambulance may accept that call for service and take those returning LACoFD personnel to the new call at the discretion of the LACoFD personnel on board.
2. 911 Calls for Service/Referral. Contractor must immediately refer to LACoFD any and all calls for emergency 911 service that are made by any person directly to Contractor's dispatch center or business office.
3. Performance: Contractor must demonstrate a continuous effort to detect and correct service level performance deficiencies as determined by the City and to continuously upgrade the performance and reliability of the EMS system. Clinical and response time performance must be extremely reliable, with equipment failure and human error held to an absolute minimum through constant attention to performance, protocol, procedure, performance auditing, proper management oversight, employee training, continuing education, and prompt and definitive service level corrective action plans.
4. Conflict of Interest. Contractor must certify that it is not and will not be violating either directly or indirectly any conflict of interest statute rule or regulation by its performance of the services described herein.
5. Complaints. Contractor must immediately notify the City and LACoFD in writing of any complaints, inquiries, or investigations initiated by OCEMSA, the

California Emergency Medical Services Authority, and/or any other federal, state or local regulatory agency regarding Contractor's services performed pursuant to the Contract Documents, including but not limited to, level of service delivery, service quality, billing practices, medical training, and personnel. Nothing in the Contract Documents will be construed as superseding the authority of OCEMSA or any other duly empowered regulatory agency from separately and/or concurrently exercising its authority to provide regulatory oversight and to take action to ensure that emergency ambulance response services are administered according to law.

6. HIPAA Business Associate Assurances. Effective on the Effective Date, or such other implementation date established by law to the extent that the parties have a "business associate relationship," the parties must carry out their obligations under the Contract Documents in compliance with the privacy regulations published at 65 Federal Register 82462 (December 28, 2000) (the "Privacy Regulations") pursuant to Public Law 104 191 of August 21, 1996 known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F-Administrative Simplification, Sections 261, et seq., as amended ("HIPAA"), to protect the privacy of any personally identifiable protected health information ("PHI") that is collected, processed or learned as a result of the services provided pursuant to the Contract. In conformity therewith, both parties must agree that they will:
 - a. Not use or further disclose PHI except (1) as permitted under the Contract (that is, for the purpose of maintaining accurate records of the services provided pursuant to the Contract and for the billing of such services to patients guarantors insurers, earners or other responsible parties, the issuance of reports to the other party pertaining to same and related administrative functions pertaining to these activities), (ii) as required for the proper management and administration of ALS and BLS in their capacity as HIPAA Business Associates of each other or (iii) as required by law;
 - b. Use appropriate safeguards to prevent use or disclosure of PHI except as permitted by the Contract and applicable law;
 - c. Report to each other any use or disclosure of PHI not provided for by the Contract or applicable law of which a party becomes aware;
 - d. Ensure that any agents or subcontractors to whom either party provides PHI or who have access to PHI agree to the same restrictions and conditions that apply to both parties with respect to such PHI;
 - e. Make PHI available to the individual who has a right of access as required under HIPAA;

- f. Make available for amendment and incorporate any amendments to PHI when notified to do so by either party;
 - g. Make available to either party the information required to provide an accounting of the disclosures of PHI made by the one party on the other party' s behalf, provided such disclosures are of the type for which an accounting must be made under the Privacy Regulations;
 - h. Make their internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining either party' s compliance with HIPAA and the Privacy Regulations; and
 - i. At the Termination of the Agreement, return all PHI received from, or created or received by one party on behalf of the other party. In the event the return of such PHI is infeasible, both parties' obligations under this Section will continue in full force and effect so long as either party possesses any PHI, notwithstanding the termination of the Agreement for any reason.
7. Medicare/MediCal Participation. Contractor must warrant and represent that it is an enrolled provider in good standing in the Medicare and MediCal programs and is not the subject of any pending actions, investigations , or prosecutions, whether civil, criminal, or administrative, relating to their billing or reimbursement practices and that Contractor will not employ or utilize individuals for the performance of services hereunder who have been excluded from any state or federal health care program. Contractor must agree to notify the City and LACoFD of any imposed exclusions or sanctions covered by this warranty, and the City reserves the right to immediately terminate the Contract upon receipt of such notice.

G. External Medical Quality Control

Contractor must fully comply with all federal, state and local medical standards, protocols, and rules and regulations applicable to the provision of private, emergency BLS ambulance transportation, including those established by OCEMSA. Contractor must at all times during the contract Term cooperate with the OCEMSA program managers and the OCEMSA Medical Director in the monitoring regulation, management oversight, and administration of the County EMS system.

The OCEMSA Medical Director or his designee has both the authority and responsibility to routinely establish and monitor private emergency ambulance system performance, including but not limited to ambulance equipment standards, medical protocols, personnel standards, training standards, medical dispatch procedures, first responder practices and training, medical control, and to effect corrective and

disciplinary action as necessary.

H. Internal Medical Quality Control

Contractor must establish a Continuous Quality Improvement ("CQI") program directed at, but not limited to, effective administration and management of clinical performance, response time performance, driver performance, dispatch performance, and for all other BLS service levels. Contractor shall submit a report annually, on or before the anniversary of the effective date, as to the status and effectiveness of its CQI program.

10. Personnel Rules

For the duration of the Term of the Agreement Contractor will comply with the following Personnel Rules and Requirements:

1. **Employee Performance.** Contractor must employ only competent and trained personnel, and will provide a sufficient number of employees to perform the services required under the terms of this Agreement and in the Contract Document. Contractor must comply with all the following personnel requirements.
 - a. All of Contractor's Transportation Personnel and employees will be sufficiently trained and capable to ensure the safe and proper discharge of their service responsibilities;
 - b. All Contractor ambulance personnel must possess valid California Driver's Licenses in the proper class including any required certifications and must be compliant with all relevant provisions of the California Vehicle Code, Health and Safety Code and all other laws applicable to private, emergency ambulance response personnel;
 - c. Contractor must have an employee alcohol and drug program that includes at a minimum, an alcohol and drug free workplace policy and an employee alcohol/drug- testing program that complies with the U.S. Department of Transportation requirements to the extent allowed by law, including alcohol and drug testing. Any Contractor employee found working under the influence of alcohol or drugs must be immediately removed from performing any further duties under the Contract Documents. The alcohol and drug program must meet the following requirements:
 - i. A contract with a program administrator and authorized lab certified by the U.S. Department of Transportation;
 - ii. Procedures and components substantially as in Part 40 of Title 49 of the Code of Federal Regulations for pre-employment;

- iii. Procedures and components substantially as in Part 382 of Title 49 of the Code of Federal Regulations for rehabilitation, return to duty and follow up testing;
 - iv. Procedures and components for testing following U.S. Department of Transportation guidelines and additional tests as required following accidents, rehabilitation, return to-service, and other circumstances providing reasonable suspicion to test;
 - v. Upon request by the City, yearly reports of the random testing component must be filed by the program administrator in redacted form, concealing employee identifiable information, with the City who may disclose such reports to the LACoFD;
 - vi. Contractor ' s and program administrators' alcohol and drug program records will be made available in redacted form concealing individual employee identities to the City upon request;
 - vii. Contractor employees must show a valid California driver's license at the time and place of testing; and
 - viii. All test results are kept confidential except that City and LACoFD are authorized to receive copies in redacted form concealing individual employee identities, for its administrative purposes and except as otherwise authorized or required by law.
- d. Contractor must participate in the California Department of Motor Vehicles (OMV) Employer Pull Notice Program.
- e. Contractor must not employ, in the performance of services pursuant to the Contract Documents, any ambulance operator or attendant convicted of or having pled nolo contendere to a crime that would preclude the individual from employment as a police officer or firefighter in the State of California. In cases where a statutory conflict in such hiring standards exists between the two professions, the City will have sole discretion to determine if the conduct being evaluated precludes the individual from service in La Habra. If any Contractor employee is charged with a crime (felony or misdemeanor) while working for Contractor in any capacity wherein that person provides service to City, Contractor must immediately contact City and provide details of the allegation. At City' s sole discretion, Contractor may be directed to suspend that employee from performing any further duties under the Contract Documents pending the outcome of the criminal case.

- f. Contractor's employees must maintain acceptable standards of dress, including uniforms, and cleanliness while on duty in the community and must at all times conduct themselves in a professional manner.
- g. Contractor's employees must fully cooperate with and abide by the instructions of LACoFD personnel while on scene.
- h. If any employee becomes ineligible to provide services under the Contract Documents, Contractor must immediately notify the City and LACoFD EMS Section Battalion Chief in writing of such ineligibility and the reason(s) therefore.
- 1. Contractors must ensure that all of its employees and ambulances are at all times during the Term of the Agreement, in full compliance with all federal, state, and local laws, rules, statutes, and regulations including but not limited to the California Vehicle Code, the California Health & Safety Code, Orange County Ambulance Ordinance, applicable City ambulance ordinances, and any and all OCEMSA or State EMS Authority policies, standards, procedures, regulations, and/or protocols. All Contractor employees must have in their possession at all times, while on duty, applicable licenses certifications and/or permits, as may be required by the agencies and authorities listed above.
- I. Contractor's emergency response personnel must carry and furnish to City staff or LACoFD personnel upon request, any required licenses, certifications, and/or permits including proper identification, for purposes of verifying validity, ensuring compliance with licensing, certification, and permitting requirements and for the proper reporting of employee performance-related issues to Contractor.
- k. The LACoFD EMS Section Battalion Chief may request Contractor to participate in emergency response joint training exercises to improve the capability and coordination of both LACoFD and Contractor's response to a given emergency or disaster. Such training will be scheduled and mutually coordinated by the LACoFD EMS Section Battalion Chief and the Contractor. Such training will not exceed twenty (20) hours per year.

1. Any additional training that may be deemed necessary by City staff or LACoFD will be attended by Contractor ' s personnel upon reasonable notice and at the sole cost and expense of Contractor. Such additional training may include but is not limited to, mass casualty, weapons of mass destruction, and/or other emergency response training.
- m. Contractor must make available to the City staff or LACoFD EMS Battalion Chief, upon request, any and all Contractor personnel training records for those employees who perform services pursuant to the Contract Documents.
- n. Contractor employees will perform the duties required under the Contract Documents in an ethical, professional, and orderly manner and will endeavor at all times to obtain and keep the confidence of the public.
- o. Contractor must utilize management practices that ensure that its Transportation Personnel, working extended shifts, part-time jobs, voluntary overtime, or mandatory overtime are not exhausted, overworked, or exhibiting impaired judgment or motor skills.
2. Employee Removal. At the request of the City and/or LACoFD (in the sole discretion of either) and based on a demonstrated pattern of poor performance, misconduct, or service complaints, Contractor will remove any Transportation Personnel designated by the City from performing further duties under the Contract.

11. Personal Safety Equipment

Contractor will ensure that all of the Transportation Personnel assigned to perform Emergency Services under the Agreement have been provided with Personal Protective Equipment (" PPE"), as required by the Contract Document. At minimum, Contractor must provide the following: PPE helmet, goggles, and Nomex long sleeve shirt or equivalent all in accordance with applicable federal and state laws or standards. It will be the sole responsibility and expense of the Contractor to maintain or replace or cause to be maintained or replaced any PPE required. Contractor is solely responsible for ensuring that all of its personnel abide by all federal, state and local safety standards.

12. Assignment

- A. Except as provided herein, Contractor may not delegate or assign its rights or otherwise transfer its obligations, in whole or in part, under the Agreement to any other person or entity without first obtaining the prior written consent of the City. Any such assignment or transfer without the prior written consent

of the City will be void and the attempted assignment will constitute a breach of the Agreement.

- B. For purposes of this section, the following will be considered to be a "transfer":
1. Any change in the business structure, including but not limited to, changes from or to
 - (a) a sole proprietorship
 - (b) a partnership, including any change in the partners,
 - (c) a corporation, including any change in the shareholders whether by operation of law or otherwise;
 2. Bankruptcy, an assignment for the benefit of creditors, or the appointment of a receiver; or
 3. A transfer by any of the owners, shareholders or members (whichever is applicable) of Contractor of greater than ten percent (10%) of the ownership interest stock or membership interest (whichever is applicable) in Contractor's business issued as of the Effective Date by the Contractor or the sale or transfer of over twenty five percent (25%) of the assets of the Contractor. In the event Contractor experiences regular stock exchanges in excess of the ten percent (10%) threshold, a separate agreement may be negotiated to set a threshold that still provides the City with the protections intended. The stock sale of a publicly traded corporation that does not constitute a change in majority ownership will not be deemed a transfer of ownership for purposes of this Section.

13. Audits and Inspections

At any time during normal business hours and as often as may reasonably be deemed necessary by the City, the City may observe and inspect Contractor's business office, and Contractor must make promptly available to the City for its examination all of Contractor's records that pertain to performance of the Agreement. The City may audit, examine and copy any and all Contractor records pertaining to their performance of the Agreement, including but not limited to personnel records, daily logs, conditions of employment and all other data. The City's right to inspect Contractor's business office and any and all records pertaining to their performance of the Agreement will be restricted to normal business hours and reasonable notice will be given to Contractor in advance of such inspection.

14. Independent Contractor

- A. In the performance of this Agreement, Contractor will be acting in an independent capacity from the City and LACoFD and not as an agent, employee, partner, or pursuant to any kind of joint venture or partnership with the City or LACoFD. The parties understand and agree that Contractor, its

officers, agents, and employees (which term specifically includes but is not limited to the Transportation Personnel) are not employees of the City, the County, or LACoFD, and are not entitled to any of the rights, benefits, or privileges of City, County, or LACoFD employees including, but not limited to medical, unemployment, or workers compensation insurance. Contractor is responsible for compliance with the Patient Protection and Affordable Care Act (2010), and City shall not be obligated to provide any health care coverage to Contractor or any of its employees.

- B. Neither the County, the City, or LACoFD, nor any of their respective officers, elected officials, agents, representatives, or employees will have any control over the conduct of Contractor's agents and employees except as specifically set forth in the Contract Documents. Under no circumstances will Contractor or any of its agents or employees represent that they are in any manner agents or employees of the City, County, or LACoFD, it being understood that Contractor, its agents, and employees are as to the City, County, and LACoFD, wholly independent contractors and that Contractor's obligations to the City and LACoFD are solely those prescribed by the Contract Documents.
- C. The City, the County, and LACoFD have no responsibility whatsoever for the payment of any wages, salary, health benefits, retirement benefits, taxes, or any other benefits that may be due to Contractor's employees and agents performing Emergency Services under this Agreement, specifically including but not limited to the Transportation Personnel. Contractor further acknowledges and agrees that the City, the County, and LACoFD have no responsibility whatsoever for the filing of any employer related documentation (tax forms, payroll or otherwise) with the federal, state or local governmental authorities, concerning those persons Contractor assigns to perform Emergency Services under this Agreement. The preparation and filing of all employee related documentation will be the sole responsibility of Contractor.
- D. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor must indemnify defend and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions which would otherwise be the responsibility of City.
- E. Notwithstanding any other agency, state, or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement, will not qualify for or

become entitled to and Contractor hereby agrees to waive, and indemnify the City from and against, any claims to any compensation, benefit, or any incident of employment by City including but not limited to eligibility to enroll in PERS as an employee of City, and/or entitlement to any contribution to be paid by City for employer contributions, and/or employee contributions for PERS benefits.

15. Compliance with Laws

All services provided by Contractor pursuant to the Contract Documents must be rendered in full compliance with all applicable federal, state, and local laws, rules, statutes, and regulations. It will be Contractor's sole responsibility to determine which federal, state, and local laws, rules, statutes and regulations apply to the services to be performed pursuant to the Contract Documents, and to maintain compliance at all times throughout the Term of this Agreement.

16. Responsibility

Except as may be specifically stated herein to the contrary it will be the responsibility of Contractor to provide all Transportation Personnel with whatever resources and equipment are necessary to perform the Emergency Services and to otherwise satisfy all of the terms and conditions set forth in the Contract Documents at all times during the Term of this Agreement. Except where it may be specifically permitted in the Agreement, Contractor may not use any outside ambulance service providers or other resources to satisfy its obligations to provide Emergency Services to the City, without first obtaining the prior written consent of the City.

Notwithstanding the granting of any such approval by the City, nothing stated herein will relieve Contractor of its duties and responsibilities under the Agreement, and any additional cost incurred will not be charged to the County, City, or LACoFD.

17. Acts or Omissions of Representatives

The acts and/or omissions of the owner(s), officers, operators, officials, employees, agents, and representatives of the Contractor in the performance of the services and obligations under the Contract Documents will constitute the acts and/or omissions of the Contractor.

18. Insolvency

Contractor will not, without the prior written consent of the La Habra City Manager, suffer either the appointment of a receiver to take possession of all, or substantially all of the assets of Contractor or make a general assignment of such assets for the benefit of creditors. Any such action taken or suffered by Contractor under any insolvency or bankruptcy proceeding constitutes a material breach of this Agreement by Contractor and all property, equipment, or materials assigned by LACoFD, the City, and/or the County to Contractor related to the provision of services under this contract will be automatically "released" by Contractor and returned back

to the possession and control of the City and LACoFD. Following the occurrence of any such event, the La Habra City Manager may assign such property, equipment, or materials to another Emergency Services provider, in the City's sole discretion.

19. Familiarity with Work

By execution of this Agreement, Contractor warrants that:

- A. It has thoroughly investigated and considered the Emergency Services to be performed;
- B. It possesses any and all licenses which are required under relevant local, State, or Federal law to perform the Emergency Services contemplated by this Agreement and will maintain all appropriate licenses during the performance of this Agreement;
- C. It has expertise in the provision of Emergency Services as that term is defined in this Agreement;
- D. It carefully considered how the Emergency Services should be performed; and
- E. It fully understands the difficulties and restrictions attending the performance of the Emergency Services under this Agreement.

20. Validity

The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any of the other provisions of this Agreement.

21. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of California. Any legal action relating to or arising out of this Agreement will be subject to the jurisdiction of the County of Orange, California.

22. Entire Agreement

This Agreement supersedes any and all other agreements whether oral or written between the parties hereto with respect to the subject matter hereof, and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not embodied herein, and that any other agreement or modification of this Agreement will be effective only if executed in writing and signed by both City and Contractor.

23. Attorney's Fees

In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding will be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the Court to be reasonable.

24. Representatives and Notices

The City Manager or his designee will be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives, and agreements on behalf of the City called for by this Agreement except as otherwise expressly provided in this Agreement.

_____, will be the representative of Contractor for purposes of this Agreement and may issue all consents, approvals, directives, and agreements on behalf of Contractor, called for by this Agreement except as otherwise expressly provided in this Agreement. All notices and written communications sent by one party to the other will be personally delivered or sent by registered or certified U.S. Mail, postage prepaid, return receipt requested, to the following addresses indicated below:

If to City:

City of La Habra
Attn: City Manager
110 East La Habra Boulevard
La Habra, CA 90631

If to Contractor:

The effective date of any written communications sent by one party to the other will be the date received if by personal service or forty-eight (48) hours after deposit in the U.S. Mail as reflected by the official U.S. postmark. Either party may change its address by giving notice in writing to the other party.

25. Waiver

No waiver of any provision of this Agreement will be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event will not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor will any waiver constitute a continuing waiver.

26. Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies will not preclude the exercise by it, at the same or different times of any other rights or remedies for the same default or any other default by the other Party.

27. Cooperation

Contractor must cooperate with the City and take all actions necessary to ensure that all terms and conditions and required performance levels, set forth in the Contract Documents are satisfied at all times throughout the Agreement Term.

28. Legal Action

In addition to any other rights or remedies, either Party may take legal action, in law or in equity to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

29. Amendment

This Agreement may be amended only by the written mutual consent of City and Contractor.

30. Additional Services

Contractor will not receive compensation for any services provided outside the scope of the Contract Documents unless such additional services are approved in writing by City prior to Contractor performing the additional services. It is specifically understood that oral requests or approvals of such additional services, change orders, or additional compensation, and any approvals from the City, will be barred and are unenforceable.

31. Counterparts

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts will be construed together and will constitute one Agreement.

32. Corporate Authority

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so the Parties hereto are formally bound to the provisions of this Agreement

IN WITNESS WHEREOF the parties hereto have caused these presents to be duly executed with all formalities required by law on the respective dates set forth opposite their signatures.

Contractor

a California Corporation

By:

Its:

Dated:

City

THE CITY OF LA HABRA
a Municipal Corporation

Jim Sadro, City Manager

Dated: _____

ATTEST

City Clerk