

EMS Medical Director Agreement

This Medical Director Agreement (this "Agreement") is between the City of Schertz, Texas (the "City") and R. Donovan Butter, D.O. (the "Medical Director").

Recitals

WHEREAS, the City of Schertz EMS provides ambulance services to the surrounding communities and emergency services districts; and

WHEREAS, a Medical Director is required for an EMS agency per Texas Administrative Code, Title 25, Part 1, Chapter 157; and

WHEREAS, the State of Texas recognizes EMS as a physician-led medical practice with delegated practice to certified EMS providers; and

WHEREAS, the delegation of practice to EMS providers requires appropriate oversight to ensure quality of care and the safety of patients cared for within the practice; and

WHEREAS, the City has determined that this agreement should facilitate the maintenance of quality services to patients served by the Department and in increasing the administrative and management efficiency of the department; and

WHEREAS, the Medical Director is willing to enter into this agreement and undertake the responsibility of providing the medical director services required by the City in accordance with recognized medical standards and upon the terms and conditions set forth herein; and

WHEREAS, the Medical Director is experienced in the performance of the duties of medical director of an emergency medical services department.

Now, Therefore, in consideration of the mutual promises of the parties hereto, and of the covenants and conditions hereinafter expressed, the parties hereby agree and covenant, each with the other, as follows:

1. Medical Director's Representations and Warranties

The Medical Director hereby represents and warrants to the City as follows:

1.1 **Licensure.** The Medical Director is and at all times during the term hereof shall remain, duly licensed and in good standing under the laws of the State of Texas to engage in the unrestricted practice of medicine and to administer and prescribe controlled substances. The Medical Director represents and warrants that his license to practice medicine and certificate to prescribe controlled substances in the State of Texas or in any other jurisdiction has never been denied, terminated suspended, probated, revoked voluntarily relinquished under threat of disciplinary action, or restricted in any way.

1.2 **Disclosure and Notice.** The Medical Director shall immediately notify the City in writing in the event that the representation concerning the Medical Director set forth in this

Agreement within the knowledge of the Medical Director is no longer true, correct, or complete. The Medical Director agrees to notify the City in writing within five (5) calendar days of the receipt of notice of the commencement of any investigation into (or regulatory action involving) his practice or concerning his or her medical license by the State of Texas Board of Medical Examiners, the Texas Attorney General, the Office of Inspector General, the United States Justice Department, or any entity of Federal State, or Local Government.

2. Medical Director's Obligations

2.1 **Appointment of Medical Director.** The City hereby engages the Medical Director to serve as Medical Director of the Department, and the Medical Director hereby accepts such engagement, all subject to terms and conditions of this Agreement.

2.2 **Services.** The Medical Director shall provide the services set forth on Exhibit A during the hours set forth on Exhibit A and incorporated herein by reference.

2.3 **City Approval.** Notwithstanding the foregoing, the Medical Director's engagement to serve as Medical Director of the Department shall be subject to the City's continuing approval. The City shall be entitled, with or without prior notice to refuse the Medical Director permission to utilize any City facility or equipment if such action is deemed by the City necessary or advisable in the best interest of patient care.

2.4 **Medical Records.** The Medical Director shall approve accurate and complete medical records in accordance with Section 6.

2.5 **Risk Management.** The Medical Director shall cooperate with the Chief of the Department.

2.6 **Quality Assurance/ Utilization Review and Peer Review Programs.** In addition to any particular services to be provided by the Medical Director set forth on Exhibit A, the Medical Director shall, if requested by the Chief of the Department, assist the Chief of the Department in developing, implementing, monitoring and reviewing the quality assurance, utilization review and peer review programs, procedures, guidelines and policies which relate to the Department's medical activities and as such required by City policies, by Medicare Law and regulations, by the standards or reports of all applicable regulatory, licensing, or accrediting agencies. If any regulatory, accrediting, or licensing agency or the City should determine that the Department does not meet or exceed the acceptable standards prescribed and which are the responsibility of the Medical Director to satisfy under this Agreement, any and all action necessary to effect compliance shall be taken by the Medical Director within a reasonable time (not to exceed (30) days unless otherwise agreed by the City) after the details of noncompliance are given by written notice to the Medical Director. The Medical Director shall comply with any and all procedures, guidelines, and policies relating to the Department's quality assurance, utilization review, and peer review programs.

2.7 **Indemnification.** The Medical Director shall protect in all legal actions, indemnify, and hold harmless the City from and against any claims or loss to persons or property to which the City may be put or subjected by reason of any act, action, negligence, omission, or

default on the part of the Medical Director in connection with the conduct and performance of the services under this Agreement.

(a) To the extent permitted by law, the City shall protect in all legal actions, indemnify, and hold harmless the Medical Director from and against any claims or loss to persons or property to which the Medical Director may be put or subjected by reason of any act, action, negligence, omission, or default on the part of the City in connection with the conduct and performance of the services under the Agreement.

2.8 **Incurring Financial Obligations.** The Medical Director agrees and acknowledges that he does not have any right, power, or authority to incur and will not incur any financial obligation, legal obligation, or liability, or other obligation on behalf of or binding upon the City. The Medical Director hereby agrees to fully indemnify and hold the City harmless from and against all such financial obligations, legal obligations, or liabilities, or other obligations which directly or indirectly bind the City, its officers or employees that the Medical Director enters into or incurs without the express prior written approval of the Chief of the Department.

2.9 **Professional Expenses.** The Medical Director shall be solely responsible for all personal and professional expenses incurred by him to render services under this Agreement.

2.10 **Professional Liability Insurance.** The City shall name the Medical Director as an insured party on the City's general liability coverage through the TML intergovernmental risk pool and shall provide the Medical Director with evidence thereof.

2.11 **Compliance with Law.** The services provided by the Medical Director shall be provided in accordance with all applicable provisions of the law and other rules and regulations of any governmental authority relating to the activities contemplated by this Agreement.

3. City's Obligations

3.1 **Space; Equipment.** The City shall make available during the term of this Agreement the space and equipment it deems are reasonably required for the proper operation and conduct of the Department and the Medical Director's services hereunder. The Medical Director agrees that such space and equipment are currently adequate.

3.2 **Supplies.** The City shall purchase for the Department all supplies it deems reasonably requires for the proper operation of the Department.

3.3 **Personnel Provided by the City.** The City shall make available during the term of this Agreement such personnel that it deems reasonable and necessary for the effective operation of the Department. The selection and retention, as well as direction and control of such personnel shall be by the employees of the City.

4. Consideration

4.1 **Consideration.** The City shall pay the Medical Director an annual amount not to exceed

\$57,000 during the initial or any successive term of this Agreement, payable in monthly payments by the 7th of each month for services in the preceding month for his services hereunder.

5. Confidentiality

5.1 **Confidential Information.** The Medical Director acknowledges that in connection with the performance of his services under this Agreement, the Medical Director may acquire and make use of certain Confidential Information ("Confidential Information"). Therefore, in order to protect the Confidential Information, the Medical Director shall not after the date hereof use the Confidential Information except in connection with the performance of the services required by this Agreement, or divulge the Confidential Information to any third party, unless the City consents in writing or such use or divulgence or disclosure of Confidential Information. The Medical Director shall immediately provide written notice to the Chief of the Department of such request or demand, including a copy of written element of such request or demand. Upon termination of this Agreement, the Medical Director will not take or retain, without prior written authorization from the Chief of the Department, any papers, patient records, files or other documents or copies thereof or other Confidential Information of any kind belonging to the City pertaining to patients or operations of the Department, without limiting other possible remedies for the breach of this covenant, such relief to be without the necessity of posting a bond, cash or otherwise.

6. Records

6.1 **Medical Records and Reports.** In performing his duties hereunder, the Medical Director agrees that he shall approve medical records and reports pertaining to patients treated, which records and reports shall be prepared, kept and filed in accordance with the Department's rules, regulations, and policies. All such records and reports shall be and remain the property of the City unless otherwise provided by law. The parties recognize that the patient has the legal right to have access to his or her medical records, and that such records are confidential and privileged under state and federal law. The City expressly agrees that the Medical Director shall have access to such patient records at any time necessary for the Medical Director to fulfill his duties under this Agreement.

7. Term and Termination

7.1 **Term.** This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect through September 30, 2024 with the option to renew for three (3) additional terms of one (1) year each unless terminated as provided for in this agreement.

7.2 **Termination.** This agreement may be terminated:

- 1) By mutual agreement and consent of both Contractor and City;
- 2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement and such default is not cured within thirty (30) days of the receipt of written notice thereof, then the non-defaulting party shall have the right (in addition to any other rights it may have) by further written notice to terminate this Agreement on any future date not less than ten (10) days after the date of such further notice;
- 3) By either party upon sixty (60) days prior written notice to the other party.
- 4) Immediately upon loss of Department Licensure or Closure of Department
- 5) Notwithstanding the foregoing, the City shall have the right, in sole discretion, to immediately terminate the entire Agreement upon occurrence of the following:
 - (a) failure by the Medical Director to meet the qualifications required herein; or
 - (b) death of the Medical Director; or
 - (c) suspension or cessation of the Medical Director's; (i) qualifications to practice medicine in the State of Texas; (ii) state or federal authorization to administer or prescribe controlled substances, (iii) participation in the Medicare or Medicaid programs; or
 - (d) permanent disability (ill health or other disability) of the Medical Director which prevents or makes inadvisable his continued provision of services as contemplated by the Agreement without reasonable accommodation; or
 - (e) determination by the City that patient health or safety is in imminent and serious danger from the Medical Director's actions or inactions; or
 - (f) indictment of the Medical Director for a felony; or
 - (g) determination by the City Council of the City that the Medical Director has taken some action to cause material harm to the reputation of the City or the Department; or
 - (h) violation by the Medical Director to cooperate with his or her peers or the employees and staff of the Department

7.3 **Post-Termination Obligations.** The termination of this Agreement shall not relieve either party of any obligations pursuant to this Agreement which arose on or before the effective date of termination, and those Sections of this Agreement which by their terms extend beyond termination or expiration of this Agreement shall survive and continue in full force and effect after the expiration of the term hereof or any termination of this Agreement.

8. Dispute Resolution

8.1 **Definition of Dispute.** "Dispute" means any and all questions, claims controversies, or disputes arising out of or relating to this Agreement, including the validity, construction, meaning, performance, effect, or breach of this Agreement, but excluding disputes or actions under Sections 7.3, 7.5, 7.8(b), 7.8(e), or 7.8(g).

8.2 **Negotiation.** In the event of a Dispute between the parties, the parties shall promptly, amicable, and in good faith attempt to resolve such Dispute through negotiations. A disputing party shall give written notice of the Dispute to the other party that shall contain a brief statement of the nature of the Dispute. If the parties are unable to resolve the Dispute within fifteen (15) days of receipt by the adverse party of written notice of Dispute, the parties shall submit the Dispute to mediation as set forth in Section 8.3.

8.3 **Mediation.** If a Dispute arises between the parties to this Agreement, it shall be submitted to mediation in accordance with the Commercial Mediation Rules and Procedures of the American

Arbitration Association ("AAA"). The parties shall attempt to agree upon an impartial mediator to mediate the Dispute, but if they are unable or find or appoint a mediator within ten (10) days of the filing of a written request for mediation with the AAA, the AAA will appoint a qualified mediator to serve. The mediation shall be held in Guadalupe County, Texas within thirty (30) days after appointment of the mediator. Each party is responsible for its own expenses.

8.4 **Interim Measures.** At any time after submission of a written notice of Dispute, either party may request a court competent jurisdiction to grant interim measures of protection:

- (a) to preserve the status quo pending resolution of the Dispute,
- (b) to prevent the destruction of documents and other information or things related to the Dispute, and /or
- (c) to prevent the transfer, dissipation, or hiding of assets. A request for such interim measures to a judicial authority shall not be deemed incompatible with the provisions of this Section 8 or a waiver of a party's rights to arbitrate.

8.5 **Tolling of Limitations Period.** By submitting a written notice of Dispute pursuant to Section 8.2, all applicable statutes of limitations and defenses based on the passage of time shall be tolled while negotiation, mediation, and arbitration proceedings are diligently conducted pursuant to the Section 8. The parties will take such action, if any, required to effectuate such tolling.

8.6 **Termination.** This section shall not prevent either party from electing to terminate this Agreement in accordance with provisions of Section 7, subject to this Section 8.

9. General Provisions

9.1 **Patient Complaints.** The parties agree to cooperate with each other in resolution of any patient complaints arising out of the services provided hereunder. All patient complaints shall be resolved in accordance with procedures established by the City.

9.2 **Corporate Practice of Medicine.** Nothing contained herein is intended to constitute the use of a medical license for practice of medicine by anyone other than a licensed physician, or to do any other act or create and other arrangements in violation of the Texas Medical Practice Act. The parties specifically acknowledge the following:

- (a) This Agreement contemplates nothing more than the delivery of medical director services by the Medical Director to the City.
- (b) There shall be no sharing of profits or splitting of fees between the Medical Director and the City.
- (c) The City claims no right, title or interest in any of the assets of the Medical Director, and none such assets shall be used for the benefit of the City.

9.3 Relationship of Parties.

9.3.1 **Independent Contractor Status.** In performing his responsibilities pursuant to the Agreement, it is understood and agreed that the Medical Director is at all times acting as an independent contractor and that the Medical Director is not a partner, joint-venture, or employee of the City. The City shall neither have nor exercise any control or direction over the medical judgment of the Medical Director nor over the methods or manner by which the Medical Director performs his work and functions under this Agreement. It is expressly agreed that the

Medical Director will not for any purpose be deemed to be an agent, ostensible or apparent agent or servant of the City, and the parties agree to take any and all such action as may be reasonably requested by the City to inform the public, patients of the Department, and others utilizing the services of the Department of such fact.

9.3.2 **Compensation, Fringe Benefits, Taxes.** The Medical Director understands and agrees that:

- (a) the Medical Director shall not be entitled to any salary or other compensation from the City or to any employee benefits provided by the City, including, but not limited to disability, life insurance, pension and annuity benefits, educational allowances, professional membership dues, and sick, holiday, or vacation pay;
- (b) the City will not withhold income taxes or pay Social Security or unemployment taxes for the Medical Director; and
- (c) the Medical Director shall indemnify and hold harmless the City against any and all liability related to withholding or failure to withhold income taxes or paying or not paying Social Security or unemployment taxes for the Medical Director. If the Internal Revenue Service or any other governmental agency challenges the independent contractor status of the Medical Director, the parties agree that the Medical Director and the City shall have the right to participate in any discussion or negotiation that occurs in the course of such a challenge.

9.4 **Conformance with Law.** The parties recognize this Agreement is subject to, and agree to comply with, applicable statutes, rules, or regulations that invalidate any term of this Agreement, that are inconsistent with any term of this Agreement, or that would cause one or both of the parties hereto to be in violation of law shall be deemed to have superseded the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of applicable statutes, rules, and regulations and negotiate in good faith towards amendment of this Agreement in such respect.

9.5 **Fraud and Abuse Law and Texas Health and Safety Code.** The parties enter into this agreement with the intent of conducting their relationship in full compliance with applicable federal, state and local law including the Medicare and Medicaid Anti-Fraud and Abuse laws and the Texas Medical Practice Act and Texas Health and Safety Code. Notwithstanding any unanticipated effect of any of the provisions herein, no party will intentionally conduct itself under the terms of this agreement in a manner to constitute a violation of the Medicare and Medicaid Anti-Fraud and Abuse Law. In the event that any federal or state court or federal or state agency of competent jurisdiction, or legal counsel of the Medical Director or the City in its reasonable opinion, determines that this agreement or any material provision of this agreement violates any federal, state, or local law, rule or regulation, the parties shall negotiate in good faith to amend this agreement or the relevant provision hereof to remedy such violation in a manner that will not be inconsistent with the intent of the parties to such provision. If the parties cannot reach an agreement on such amendment, however, then either party may immediately terminate this agreement.

9.6 **Change in Law.** If there is any federal, state or local law, regulation, or rule, which affects this agreement or the activities of either party under this agreement, or any change in judicial or administrative interpretation of any such law, regulation, or rule and either party reasonably believed in good faith that the change will have a substantial adverse effect on that party's business operations or its rights or obligations under this agreement, then such party may upon written notice, require the other party to enter into good faith negotiations to renegotiate the terms of this agreement. If the parties are unable to reach an agreement concerning the modification of this agreement within the earlier of forty-five (45) days after the date of the notice seeking

renegotiation or the effective date of the change, or if the change is effective immediately, then either party may immediately terminate this agreement by written notice to the other party.

9.7 **Governing Law and Venue.** This agreement shall be constructed and governed according to the laws of the State of Texas, without giving effect to its conflict of laws provisions. Subject to Section 8, any suit, action, or proceeding against the Medical Director with respect to this Agreement, or any judgment entered by any court in respect thereof may be brought in the Courts of the State of Texas as the City in its sole discretion may elect, and the Medical Director hereby submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. The Medical Director hereby irrevocably waives any obligation which he may now or hereafter have to the laying of venue of any suit, action, or proceeding arising out of or relating to this Agreement brought in the courts located in Guadalupe County, and hereby further irrevocably waives any claim that any suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

9.8 **Assignment.** No assignment of this agreement of rights and obligations hereunder shall be valid without the prior written consent of the non-assigning party.

9.9 **No Referral.** Nothing contained in this Agreement shall require (directly or indirectly, explicitly or implicitly) either party to refer any patients to any other party or to use any other party's facilities as a precondition to receiving the benefits set forth herein.

9.10 **Rights and Property.** The Medical Director acknowledges and agrees that this agreement shall not be deemed to grant any leasehold, property, or other ownership interest of any nature in the City's real property, equipment, furnishings, or supplies but all rights as are given to the Medical Director hereby shall be in the nature of contract.

9.11 **Notices.** Any notice to a party hereto pursuant to this agreement shall be given in writing by the personal delivery, overnight delivery, facsimile, telecommunications, or United States certified or registered mail, return receipt requested, addressed as set forth on the signature page hereof. The parties shall hereafter notify each other in accordance herewith of any change of address to which notice is required to be sent. Notice shall be effective upon delivery.

9.12 **Parties Bound.** This agreement and the rights and obligations hereunder shall be hinging upon and inure to the benefit of the parties, the Medical Director, and their permitted assigns.

9.13 **Duty of Good Faith.** The parties hereto agree to perform their respective covenants and obligations under this agreement fairly and in good faith, and also to act fairly and in good faith in the enforcement of their respective rights hereunder.

9.14 **No Third-Party Beneficiaries.** No provision of this agreement is intended to benefit any person or entity who is not a party to this agreement, nor shall any person or entity not a party to this Agreement have any right to seek to enforce or recover any right or remedy with respect hereto.

9.15 **Non-Waiver.** No waiver by either of the parties hereto of any failure by the other party to keep or perform any provision, covenant, or condition of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same, or any other provision, covenant, or condition.

9.16 **Additional Documents.** Each of the parties hereto agrees to execute any documents that may be requested from time to time by the other party to implement or complete such parties obligations pursuant to this agreement.

9.17 **Section Headings.** The headings preceding the text of the several Sections of this agreement are inserted solely for convenience of reference and shall not constitute a part of this agreement, nor shall they affect the meaning, construction, or effect of any section hereof.

9.18 **Gender and Number.** Whenever the context of this agreement requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words herein shall include the singular and plural.

9.19 **Entire Agreement.** This agreement, including any exhibits or addenda identified and incorporated by reference herein, contains the entire understanding of the parties and supersedes any prior written or oral agreements or understandings among them concerning the subject matter set forth above. There are no representations, warranties, covenants, promises, agreements, arrangements, or understandings, oral or written express or implied among the parties hereto relating to the subject matter set forth above which have not been fully expressed herein.

9.20 **Amendments.** This agreement can be amended only by an instrument in writing signed by the parties. Amendments to this agreement shall be effective as of the date stipulated therein.

9.21 **Severability.** The sections, paragraphs, and individual provisions contained in this agreement shall be considered severable from the remainder of this agreement, and in the event that any section, paragraph, or other provision should be determined to be unenforceable as written for any reason, such determination shall not adversely affect the remainder of the sections, paragraphs or other provisions of this agreement. It is agreed further that in the event any section, paragraph, or other provision is determined to be unenforceable, the parties shall use their best efforts to reach agreement on an amendment to the agreement to supersede such served section, paragraph or provision.

9.22 **Counterparts.** This document may be executed in multiple counterparts, each of which when taken together shall constitute one and the same instrument.

EXECUTED effective as of September 1, 2023 (the “Effective date”)

City of Schertz, Texas

Steve Williams, City Manager

Notice Address:
City of Schertz, Texas
1400 Schertz Parkway
Schertz, TX 78154
Att: City Manager

R. Donovan Butter, DO

Notice Address:
210 Scenic Hill Lane
Cibolo, TX 78108

Exhibit A

Duties of the Medical Director

Responsibilities:

1. Serve as patient advocate in the EMS system.
2. Set and ensure compliance with patient care standards including communications standards, and dispatch and medical protocols.
3. Utilizing current research and evidence-based medicine, develop and implement protocols and standing orders, under which the pre-hospital care provider functions in conjunction with the Schertz EMS System. All standards and functions and performance will be accomplished in accordance with the Texas Medical Practice Act (Chapters 151-165 of the Texas Occupations Code), Chapter 197 of the Texas State Medical Board Rules, Chapter 773 of the Texas Health and Safety Code, or any other relevant laws, regulations or rules;
4. Promote EMS research and evidence-based quality improvement.
5. Maintain liaison with the local and regional medical community including, but not limited to, hospitals, emergency departments, and regional Medical Directors
6. Maintain knowledge levels appropriate for an EMS medical director through continued education.
7. Maintain Emergency Medical Services Medical Director qualifications as required by the Texas Medical Board.
8. Will approve the level of prehospital care which may be rendered by prehospital EMS personnel upon their entry into the EMS system.
9. Withdraw responsibility for EMS personnel for noncompliance with the Emergency Medical Services Act, (Texas Health and Safety Code, Chapter 773) Chapter 197 of the Texas State Medical Board Rules, accepted medical standards or other relevant laws, regulations, or rules.

Requirements

1. The medical director shall devote a minimum of twenty (20) hours each month including direct contact time with members of the Schertz EMS System
 - a. This may include meetings, field time, case reviews or educational opportunities.
2. Attend monthly and quarterly meetings to include the following:
 - a. Lt/FTO meeting
 - b. Management meeting
 - c. Schertz EMS staff meeting
 - d. Monthly clinical / credentialing meeting
 - e. Regional Medical Directors
3. The medical director shall conduct a "Quarterly Case Review" to discuss specific patient care the paramedics are providing in the pre-hospital environment. Case review may be conducted more frequently if a need is identified.
4. The Medical Director will serve as the Infection Control officer for the Schertz EMS System. Will be responsible for any training as per the U.S. Code, Title 42, Chapter 6A,

Subchapter XXIV, Part G, §300ff- 136 as described in the Texas Administrative Code RULE §157.11.

5. The medical director shall be responsible to update and keep current the Standard Medical Operating Procedures (SMOPs) for the Schertz EMS System. The SMOPs will be reviewed and updated on a bi-annual basis at minimum.
6. The medical director shall maintain a working relationship with the paramedics and be able and willing to implement programs and techniques as he/she observes a need, for the progression of the Schertz EMS System.
7. The medical director shall assist in the continuing education of paramedics and EMT's by occasionally participating in EMS training programs, to include but not limited to continuing education classes, initial EMT training and new employee orientation.
8. The medical director will collaborate with Schertz EMS clinical department on any needs for various projects.
9. The medical director shall assist in evaluating the overall paramedic program and initiate changes as needed in conjunction with Schertz EMS. To appropriately evaluate needs, the medical director will set aside "field time", on a monthly basis, to respond to calls for service.
10. The medical director will submit a detailed report to the Schertz EMS Chief every six months. This report will include a listing of his/her activities relative to their compliance to the requirements and responsibilities of the position.
11. The medical director, having a contractual agreement with Schertz EMS, shall be an advocate for the certified EMS personnel employed by the City of Schertz and its first responder organizations. Being such, he/she shall give notification to the City of Schertz before entering into other contracts or agreements as medical director with any other EMS provider at any level of certification and will participate in an impact evaluation discussion with Schertz EMS Chief.