AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF MILPITAS FOR EMERGENCY MEDICAL DISPATCH SERVICES

BACKGROUND

The City of Milpitas ("City") wishes to contract with a provider of emergency medical dispatch ("EMD") services for the provision of EMD services on its behalf. This Agreement Between the County of Santa Clara and the City of Milpitas for Emergency Medical Dispatch Services ("Agreement") outlines the terms and conditions by which the County of Santa Clara ("County") shall provide effective, timely and efficient emergency medical dispatch services for the City.

THE AGREEMENT

Article 1. Nature of Services.

1.1 Scope of Services.

The service obligations of the parties are described in Exhibit A, which is attached and incorporated into this Agreement.

Article 2. Compensation.

2.1 Amount of Payment.

(a) The cost to County for the first year (September 22, 2008 through June 30, 2009) of services provided under this Agreement shall be paid exclusively from the County EMS Agency Fines and Penalties Trust Fund in an amount not to exceed $42,500.00. The City shall not be obligated to pay any amounts for any extra, further or additional amounts or costs beyond the aforementioned sum.

(b) The cost to County for the second year (July 1, 2009 through June 30, 2010) of services provided under this Agreement will shall be paid exclusively from the County EMS Agency Fines and Penalties Trust Fund in an amount to be determined in accordance with the cost methodology in Exhibit B, which is attached and incorporated into this Agreement. The City shall not be obligated to pay any amounts for any extra, further or additional amounts or costs from non-County EMS Agency Fines and Penalties Trust Fund sources.

(c) Effective July 1, 2010, the City shall compensate the County for the services provided under this Agreement in accordance with the cost methodology set forth in Exhibit B.

Article 3. Term and Termination.

3.1 Term of Agreement.

(a) This Agreement is effective for a two (2) year base term beginning at 12:00 a.m., September 22, 2008 and ending at 11:59 p.m. on June 30, 2010, unless terminated earlier in accordance with Section 3.2 or extended pursuant to the provisions herein.

(b) The City may extend this Agreement for up to three (3) additional one (1) year terms by providing County at least ninety (90) days written notice in accordance with Section 5.1. The parties will execute any amendments necessary to implement such extensions.

3.2 Termination.

(a) Termination for Cause. Either party may terminate this Agreement for cause upon written notice to the other. For purposes of this Agreement, cause includes, but is not limited to, a material breach of this Agreement or a violation of any applicable laws. Such notice will specify the reason for termination and will indicate the effective date of the termination.

(b) Opportunity to Cure.

(1) The nonbreaching party will give written notice of a material breach to the breaching party, specifying the breach.

(2) The breaching party will not be deemed in default of this Agreement and the nonbreaching party will not institute proceedings or exercise any remedies against the breaching party unless the breach has not been cured, corrected or remedied within:

(A) 15 days after notice of the breach is provided; or

(B) upon mutual agreement of the parties, within a longer period as may be reasonably required to cure, correct or remedy the breach, provided the breaching party has commenced to cure, correct or remedy the breach within 15 days after notice is provided and diligently and continuously pursues such cure, correction or remedy.

(c) Termination for Convenience.

(1) The County may terminate this Agreement, without cause, if the County EMS Agency Fines and Penalties Trust Fund no longer has funds available to pay for the

covered services.

(2) Either party may terminate this Agreement without cause by giving the other party ninety (90) days written notice.

(d) Compensation in the Event of Termination. In the event of termination, the County shall be entitled to compensation for services performed prior to the effective date of the termination as provided herein.

Article 4. Liabilities and Indemnification.

4.1 Mutual Indemnification.

In lieu of and not withstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the County and the City agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify, defend with counsel acceptable to the non-indemnifying party, whose approval shall not be unreasonably withheld, and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring wholly by reason of the negligent acts or omissions or willful misconduct of the other party hereto, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other party under this Agreement.

Article 5. Dispute Resolution

In the event of any dispute between the parties arising from or relating to this Agreement, the parties will attempt to resolve the dispute initially by informal means. Upon the request of either party, the contract administrators of each party will meet to discuss the dispute, will exchange any information that they mutually agree is relevant to the issues in dispute, and will use all reasonable efforts to resolve the dispute without the need for further proceedings.

Article 6. Miscellaneous.

6.1 Notice.

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To the City:

Attn: Chief of Police
City of Milpitas
Milpitas Police Department
1275 N. Milpitas Blvd.
Milpitas, CA 95035

To the County:

Attn: Communications Director
County of Santa Clara
Communications Department
2700 Carol Dr.
San Jose, CA 95125

6.2 Compliance and Nondiscrimination.

The parties will comply with all applicable Federal, State, and local laws and regulations. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973 (Sections 503 and 504), the California Fair Employment and Housing Act (Government Code sections 12900 et seq.), and California Labor Code sections 1101 and 1102. The parties will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor will the parties discriminate in the provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

6.3 Relationship of Parties; Independent Contractor.

County will perform all work and services described in this Agreement as an independent contractor and not as an officer, agent, servant or employee of City. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of effecting the provisions of this Agreement. The parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither party has the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided in this Agreement.

6.4 Governing Law.

This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California.

6.5 Assignment.

The parties may not assign this Agreement or the rights and obligations hereunder without the specific written consent of the other.

6.6 Entire Agreement.

This document represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

6.7 Amendments.

This Agreement may only be amended by an instrument signed by the parties.

6.8 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

6.9 Severability.

If any provision of this Agreement is found by a court of competent jurisdiction to be

void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

6.10 Waiver

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.

6.11 Survival.

All provisions of this Agreement allocating liability between the City and the County, payment obligations, and the duty to defend, indemnify and hold harmless shall survive the termination of this Agreement.

6.12 Integration and Order of Precedence.

This Agreement, including all Exhibits, represents the entire and integrated contract between the City and the County and supersedes all prior negotiations, representations, or agreements, either written or oral. In the event of a conflict between the provisions of the main body of the Agreement and its Exhibits, the provisions of the main body shall control. In the event of a conflict between Exhibits A and B, the provisions of Exhibit A shall control.

6.13 Time of the Essence.

The parties acknowledge that time is of the essence of this Agreement. Either party's failure to complete any of the obligations outlined herein during the term of the Agreement shall be deemed a breach of the Agreement.

6.14 Amendment.

The parties may amend this Agreement only by a writing signed by all the parties.

//

//

IN WITNESS WHEREOF, the COUNTY and CITY have caused this Agreement to be executed by their duly authorized representatives as of the day and year written above.

Signed:

COUNTY OF SANTA CLARA

by _____ 8/28/08
Bert Hildebrand — date
Communications Director

CITY OF MILPITAS

by _____ _____
Tom Williams — date
City Manager

Approved:

_____
Gary Graves
Assistant County Executive

Attest:

_____
Mary Lavelle, City Clerk

Approved as to Form and Legality:

Martha M Chase 8.28.08
Martha Chase, Lead Deputy County Counsel

Approved as to Form:

_____
Michael J. Ogaz, City Attorney

Exhibits to this Agreement:

Exhibit A – Emergency Medical Dispatch (EMD) Process, Procedural Requirements
Exhibit B – Compensation for Services

Exhibit A

Emergency Medical Dispatch Process, Procedural Requirements

To ensure the safe and efficient transfer of callers requiring Emergency Medical Dispatch (EMD) services from Milpitas Communications to County Communications, Milpitas Communications and County Communications agree to process 911 and seven-digit calls using the following process and procedural requirements:

1. Milpitas Communications will use a "3-way" telephone call transfer process to route callers to County Communications for EMD services. This process will:
   - Use a "one-button" method to minimize transfer time;
   - Result in Milpitas telecommunicators:
     - Using a scripted transfer statement prior to caller transfer; and
     - Remaining on the line silently until the provision of an MPDS "Determinant" or until call demand requires them to leave the call.

2. County Communications will provide Milpitas Communications with continuous (24 hours per day, 7 days per week) EMD services using National Academy of Emergency Dispatch (NAED) certified Emergency Medical Dispatchers. All dispatchers providing EMD services will use the most current version of the Medical Priority Dispatch System as determined by the NAED.

3. County Communications will use NAED certified Emergency Medical Dispatch Quality (EMD-Q) reviewers to score and calculate protocol compliance reports. The number and method of cases for review will be in accordance with NAED Accreditation requirements.

4. County Communications agrees to participate in periodic "special case" reviews, in the event they are requested by Milpitas Communications.

5. County Communications and Milpitas Communications agree that the determination "EMD Is Unavailable" will occur following a "three-ring" wait time for EMD caller transfers to County Communications for 911 or designated seven-digit number transfers.

6. County Communications and Milpitas Communications agree to work together to develop or revise policies and procedures for the receipt and management of callers requiring EMD services following written request by either agency.

7. County Communications will include Milpitas Communications and Milpitas Fire Department personnel in quality improvement feedback processes and the Medical Dispatch Review Committee used to maintain and improve EMD compliance to protocol. County Communications will also provide monthly protocol compliance reports reporting:

Exhibit B
Compensation for Services

Cost Methodology

County Emergency Medical Dispatch (EMD) Program costs include:

1. Salary Costs: Premium paid to EMD-certified dispatchers

2. Other Expenses:
- EMD Certification training course fees
- Educational materials
- Medical Priority Dispatch System (MPDS) protocols card-set/software and maintenance

The County's EMD Program costs will be apportioned between the parties in proportion to the number of medical calls handled for the City compared to the total number of medical calls handled for the County (and other entities). EMD Program costs will be based on the most current budget cost information available for the next fiscal year and will be established each year of the Agreement by March 31 to be effective the following July 1. Call volume will be based on the last fiscal year for which there is complete data (e.g., on March 31, 2008, estimated call volume for FY 2009 will be based on FY 2007 data). After July 1, an adjustment of +/- 5% will be made to the City's cost, if actual County EMD Program costs or City's call volume are determined by the County to vary significantly from the previously estimated number. For this purpose "vary significantly" means having the effect of increasing or decreasing the City's cost by more than 1%. The County will notify City of any adjustment prior to billing the City's fourth quarterly installment.

Program Cost for Fiscal Year 2009 (and Example Methodology for Outlying Years):

$286,077	FY 2009 EMD Premium Pay Cost (71 EMD Certified Dispatchers)
12,426	FY 2009 EMD Educational and Other Expenses
298,503	Total FY 2009 County EMD Program cost (as of 1/2/08)
x	
13.97 %	% Milpitas Medical Calls (see calculation below)
$ 41,701	Milpitas EMD Cost for FY 2009 (subject to +/- 5% adjustment after July 1, 2009)

8.5 = Average number of Milpitas Medical Calls per day in FY 2007
52.5 = Average number of Medical Calls per day handled in FY 2007 * by County in jurisdictions where County provides EMD services
61.0 = Total average number of County + Milpitas Medical calls in FY 2007 *
13.97 = % of Total FY09 Medical calls projected to be Milpitas calls (8.5/61.0)

- per County Communications activity counts

- Percent compliance to Case Entry
- Percent compliance on Chief Complaint Selection
- Percent compliance on Key Questions
- Percent compliance on Determinant Selection
- Percent compliance on Pre-Arrival Instructions (PAIs)/Post-Dispatch Instructions (PDIs)

8. County Communication will maintain the following compliance levels for each of the following EMD and caller transfer processes:
    - Compliance to Case Entry 95 percent
    - Compliance to Chief Complaint Selection 90 percent
    - Compliance to Key Questions 90 percent
    - Compliance to Determinant Selection 90 percent
    - Compliance to PAIs 95 percent
    - Compliance to PDIs 90 percent
    - Overall Compliance to Protocol 90 percent

9. County Communications will provide eight pocket user guides to Milpitas Fire Department.