

# **MEMORANDUM**

*Milpitas Fire Department*

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**Date:** May 23, 2011

**To:** Milpitas City Council  
Tom Williams, City Manager

**From:** Scott Brown, Battalion Chief

**Subject:** **911 EMS Services Contract Agreement**

## **Recommended Action**

Milpitas City Council to authorize signature authority to City Manager Tom Williams, or designee (Fire Chief Brian Sturdivant), to negotiate, execute, amend, terminate, and take any and all necessary or advisable actions relating to contracts and contract amendments with City Manager Tom Williams authorizing operation in the Santa Clara County Exclusive Operating Area for EMS response to 911 calls for period July 1, 2011 through July 1, 2016, following approval by the Milpitas City Council. Delegation of authority shall expire on July 1, 2016.

## **Financial**

Participating fire departments are eligible for up to \$5M (total amount available for all departments combined) in First Responder Funding from the County contracted 911 ambulance service provider (Rural/Metro) upon meeting various performance standards determined and monitored by the EMS Agency. The maximum funding available to the City of Milpitas is \$214,197.64. (\$193,597.25 for FD response and \$20,600.39 for EMD performance) This fund will be held by the ambulance service provider (Rural/Metro).

The EMS Agency will authorize invoices against the fund upon determining that certain performance requirements have been met by a fire department provider. Departments that do not meet the established performance criteria will realize a reduction in the amount that they receive each month. The amount of deduction is then placed into the Emergency Medical Services Trust Fund for Board of Supervisor authorized projects.

The amount of liquidated damages (fines) has been refined with the assistance of the County Fire Chiefs Association and remains an important element of incentive performance for call time response and reporting. Performance exceptions related to the fire department include a provision that all liquidated damages are waived if they achieve 95% or better response time performance compliance per-month, a provision carried over from the existing agreement. When liquidated damages apply, they are deduced from a department's first responder funding allocation.

## **Contract History**

In December of 2010, the Board of Supervisors approved the contract with Rural Metro of California (Rural/Metro) to provide paramedic ambulance services in the County Service Area (excluding the City of Palo Alto and Stanford Lands) beginning July 1, 2011. These agreements codify roles and responsibilities between the EMS Agency and fire departments.

In the new agreement, fire departments will contract directly with the County in order to meet Health and Safety Code requirements identified in Section 1797.204 and also to enable the fire departments to participate in First Responder Funding that is provided by Rural/Metro through their contract with the County.

In regard to first responder funding, annexes to the Agreement between the County (Public Health/EMS) and the City of Milpitas (Fire Department), detail various performance standards that must be met by the fire department in order to receive first responder funding allocations directly from Rural/Metro. This occurs after the EMS Agency has verified compliance with the established performance standards. The requested term of these agreements match the five (5) year term of the agreement between the County and Rural/Metro.

Currently, fire departments are authorized through a subcontract with American Medical Response (under contract to the County) to provide paramedic level services and for the receipt of first responder funding. The revised agreement construction facilitates a direct relationship between the County, as the regulatory authority, and the fire departments. The fire departments must continue to operate under the standards prescribed in the agreement between the County and Rural/Metro (operation within the Santa Clara County Exclusive Operating Area), but are not accountable to a private vendor (Rural/Metro).

## **Background**

In April of 2009, the Health and Hospital Committee and Board of Supervisors approved the development of a Request for Proposals (RFP) for 911 Ambulance Services by the EMS Agency. Shortly thereafter the EMS Agency began a series of workshops to build an RFP cooperatively with the fire departments. The EMS Agency provided a "boilerplate" document that eventually became the RFP that was authorized by the Board of Supervisors.

In September of 2010, the EMS Agency began to develop the EMS provider agreement and annexes cooperatively with the fire departments. Another "boilerplate" document was provided by the EMS Agency and then the content was refined through a series of workshops (11 as of March 8th).

Section 1797.204 of the Health and Safety Code states that the local EMS agency shall plan, implement, and evaluate an emergency medical services system, in accordance with the provisions of this part, consisting of an organized pattern of readiness and response services based on public and private agreements and operational procedures. The written agreement specifies the scope of services to be provided by the fire department provider and County, and authorizes the fire department provider to utilize paramedics to deliver those services as part of an integrated Countywide EMS System.

In part, execution of this agreement will enable the Milpitas Fire Department to provide paramedic level services and will codify the authority of the County EMS Medical Director as the medical control authority that permits Emergency Medical Technician (EMT's) and paramedic clinical care practice in the County.

In addition, fire departments that operate within the Santa Clara County Exclusive Operating Area are eligible for funding provided by Rural/Metro.

The provider agreement consists of a "master" agreement which addresses Health and Safety Code Section 1797.204 provisions supported by annexes that detail performance criteria for the use of fire department ambulances (City of San Jose, Santa Clara, and Gilroy only) and/or first responder funding. Departments may choose the option to participate in the provision of emergency ambulance service support (formally known as "STAR" units or Supplemental Transport Ambulance Resources) when the County-contracted ambulance provider requires assistance or if the department wishes to access available first responder funding. If fire departments choose not to participate in either emergency ambulance support and/or first responder funding, then only the "master" agreement will apply.

**911 EMERGENCY MEDICAL SERVICES PROVIDER AGREEMENT**  
**BETWEEN**  
**CITY OF MILPITAS**  
**AND**  
**THE COUNTY OF SANTA CLARA**  
**EMERGENCY MEDICAL SERVICES AGENCY**

This Emergency Medical Services Agreement (the “Agreement”) is made by and between the City of Milpitas (“Provider”), and the County of Santa Clara (the “County”) (collectively, the “Parties”), with respect to the provision of 911 emergency medical services in the County of Santa Clara.

**RECITALS**

**WHEREAS**, the Emergency Medical Services Agency (“EMS Agency”) of the County of Santa Clara is responsible for regulating advanced life support (“ALS”) providers within Santa Clara County, and for authorizing the provision of ALS response and transport within the County; and

**WHEREAS**, Health and Safety Code Section 1797.178 specifies that no person or organization shall provide ALS or limited advanced life support unless that person or organization is an authorized part of the emergency medical services system; and

**WHEREAS**, pursuant to Health and Safety Code Sections 1797.204 and 1798, among others, the EMS Agency is responsible for system coordination, medical oversight, and support of the delivery of all emergency medical services by provider agencies such as the City of Milpitas Fire Department (“Provider”); and

**WHEREAS**, the EMS Agency and the Provider agree to cooperate with each other for the purpose of delivery, maintenance, and improvement of emergency medical care within Santa Clara County and the areas served by the County of Santa Clara, in order to meet the needs of Santa Clara County 9-1-1 patients efficiently and appropriately; and

**WHEREAS**, the Emergency Medical Services System (“EMS System”) represents a collaborative effort between the County, cities, districts and other stakeholders to assure for the timely and efficient response to emergency medical calls, and for high quality patient outcomes; and

**WHEREAS**, the County entered into a contract for Advanced Life Support First Response and Paramedic Ambulance Transportation for the County’s EOA, excluding the City of Palo Alto and “Stanford Lands” parcels, with Rural/Metro of California, Inc. for the period of July 1, 2011 through June 30, 2016.

**WHEREAS**, the EMS Agency, by this Agreement, wishes to designate Provider, and allow Provider to operate within the Santa Clara County EMS System to respond to 9-1-1 emergency medical service requests.

**NOW THEREFORE**, the parties agree as follows:

## ARTICLE I

### DEFINITIONS

1.1 Contract Administrator: shall be defined as the Emergency Services Director of the County of Santa Clara.

1.2 Contract Manager: shall be defined as the EMS Agency staff designated by the EMS Director to act as the manager of this Agreement.

1.3 Provider: shall be defined as any agency or entity providing first response at the basic life support, limited advanced life support, or advanced life support level.

1.4 The definitions included in California Code of Regulations, Title 22, Division 9, Chapters 1-9; California Code of Regulations, Title 13, Division 2, Chapter 5, Article 1 and the California Health and Safety Code, Division 2.5, Chapters 2-11, shall apply to this Agreement unless the Agreement indicates otherwise.

## ARTICLE II

### TERM/OPTION TO EXTEND

2.1 Term of Agreement. This Agreement shall be effective as of 12:00 a.m. July 1, 2011 and shall be in force and effect for a period of five (5) years thereafter, until 11:59 p.m. June 30, 2016.

2.2 Option to Extend. The County shall have the right to extend the term of the Agreement for two (2) additional three (3) year periods if desired by Provider. The County may exercise its right to extend the term of this Agreement by providing written notice no less than one hundred eighty (180) days prior to the expiration of the term. Upon extension of this Agreement, the Provider shall provide the services set forth in this Agreement in accordance with the terms in effect immediately prior to the extended term.

## ARTICLE III

### PROVIDER BREACH AND PROVISIONS FOR EARLY TERMINATION

3.1 Provider Breach. Conditions and circumstances that constitute a breach of this Agreement include, but are not limited to, the following:

3.1.1 Failure of the Provider to operate within the EMS system in a manner which enables the County and the Provider to remain in compliance with federal and state laws, rules and regulations, and with the requirements of the Santa Clara County Prehospital Care Manual and any related rules and regulations.

3.1.2 Falsification of information or data supplied by the Provider.

3.1.3 Acceptance or payment by the Provider or Provider's employees of any bribe, kickback or consideration of any kind in exchange for any consideration whatsoever, when such consideration or action on the part of the Provider or Provider's employees could be reasonably construed as a violation of federal, state or local law.

3.1.4 Failure to meet the provisions identified in this Agreement.

3.1.5 Repeated failure of Provider to provide reports, and data generated in the course of operations including, but not limited to, dispatch data, patient report data, response time data or financial data, within the time periods specified in the Agreement.

3.1.6 Failure of Provider to meet system standard of care as established by the Medical Director, following reasonable notice and opportunity to address any such failure.

3.1.7 Any failure of performance, clinical or other, required in accordance with the Agreement and which is determined by the Contract Administrator and confirmed by the EMS Medical Director to constitute an endangerment to public health and safety.

3.2 Declaration of Material Breach and County's Remedies for Performance Failures. If conditions or circumstances constituting a breach as set forth above are determined to exist, the County shall have all rights and remedies available at law or in equity under the Agreement, specifically including the right to terminate the Agreement. In the event the County determines that a material breach has occurred, the County shall provide reasonable notice of such breach to Provider. Provider shall have up to thirty (30) days to either cure the breach or provide evidence to the reasonable satisfaction of the County that a material breach does not exist. The County's remedies for material breach includes but is not limited to the ability to terminate Provider's participation in Annex A and Annex B of this Agreement. In the event the County determines that conduct or non-performance poses endangerment to public health and safety, the County may, in its discretion, decide not to allow the Provider to have a cure period.

3.3 Termination Without Cause. Either Party may terminate this Agreement at any time without cause, by giving at least one hundred eighty (180) calendar days prior written notice thereof to the other when not addressed otherwise in this Agreement.

## ARTICLE IV

### SCOPE OF WORK

4.1 General. The basis of this Agreement is the desire and intention of the Parties to establish and define the roles and responsibilities of the EMS Agency and the Provider relative to the delivery of comprehensive emergency medical care within Santa Clara County, and Provider does not waive or modify any present rights under any statute by its execution of this Agreement.

4.1.1 This Agreement in accordance with the intentions of the Parties, will serve as a written agreement as required under Title 22, California Code of Regulations, Sections 100167(b)(4) and 100300(b)(4), between the EMS Agency and the Provider, for the purpose of developing and maintaining the working relationship between the Parties; and

4.1.2 This Agreement does not confer any rights, privileges or ownership to the Provider to provide services and/or respond to medical emergencies requested within any of the exclusive operating areas in Santa Clara County that are not expressly detailed herein or authorized by other applicable laws such as those provided to public safety authorities, fire departments and/or districts, etc.

4.2 Non-Transport Emergency Advanced Life Support (Paramedic) First Response Services. The Provider, by this Agreement, is authorized to continue to provide the following services:

Non-transport emergency Advanced Life Support (paramedic) first-response services in order to support and/or augment the services provided by Rural/Metro within the County Exclusive Operating Area. The roles and responsibilities of the Parties in providing these services are described below.

4.3 Roles and Responsibilities of the EMS Agency. The EMS Agency shall be responsible for, but not limited to, the following:

4.3.1 Perform EMS Agency responsibilities in a spirit of cooperation and collaboration with the Provider.

4.3.2 Establish and promulgate medical control policies and EMS System procedures consistent with federal and, state law and regulations, as well as County ordinances, policies and standards.

4.3.3 In accordance with the Health and Safety Code Division 2.5, administer and coordinate the Santa Clara County EMS System.

4.3.4 Engage in efforts at local, state, and federal levels related to the procurement of necessary funding for the purpose of maintaining the Santa Clara County EMS System.

4.3.5 Collaborate with the Provider on an ongoing basis to promote the enhancement of the Santa Clara County EMS System.

4.3.6 Provide access to standardized EMS System policies and/or protocols as contained in the “Santa Clara County Prehospital Care Manual.”

4.3.7 In accordance with Title 22 of the California Code of Regulations and as approved by the EMS Agency, implement an EMS Quality Improvement Plan (EQIP) as a means of evaluating clinical emergency medical services provided.

4.3.8 Manage the hospital radio system or equivalent and provide access to the County Emergency Medical Services Communication System (the Provider shall be responsible for the cost for equipment used by the Provider to include programming, maintenance, and replacement).

4.3.9 Assess compliance with policies and procedures of the EMS System by means of scheduled reviews, which may include site visits of Provider’s program.

4.3.10 Assess the Provider’s emergency medical services program by observing, through field observations and/or attendance at the Provider-offered training, exercises, orientation, or other programs. Routine site visits will be scheduled between the Parties, when appropriate.

4.3.11 In consultation with various EMS System stakeholder committees and providers, coordinate a comprehensive emergency medical services data collection system, which includes required data elements, data analysis, report generation, and other details related to ensuring the quality of the EMS System.

4.3.12 In collaboration with the Provider, may participate in research endeavors and other programs, including, but not limited to, pilot studies.

4.3.13 In accordance with Health and Safety Code Section 1797.153, coordinate and authorize Medical Health Mutual aid through the authority of the Medical Health Operational Area Coordinator (MHOAC).

4.3.14 The EMS Agency/County EMS Medical Director shall establish and provide medical control by means of the following:

1. Develop and approve medical protocols in accordance with Title 22 and other policies pertaining to base hospitals, paramedic and EMT personnel, EMS service providers, and the EMS Agency.
2. Whenever possible, significant system-wide changes will be adopted on an annual basis to ensure there is sufficient time for advance planning and the training of all personnel. This may include clinical protocols and orders, and master plans.
3. Ensure Provider compliance with all applicable state and federal laws and regulations, including but not limited to, confidentiality and disclosure, narcotic control, mandatory healthcare reporting, as related to the provision of services under this Agreement.
4. Consult with the Provider Agency Medical Advisor through the EMS Agency's Medical Advisory Committee to develop written medical policies and procedures.

4.4 Roles and Responsibilities of Provider. Responsibilities of the Provider under this Agreement shall include the following:

4.4.1 Respond to requests for emergency medical services within Provider's authorized jurisdiction including those established through automatic and mutual aid agreements. The County will work with Provider to identify Alpha and Bravo type calls to the County Jail that will not require First Responder services (ALS or BLS) through use of the triage components of the Emergency Medical Dispatch System and protocols for clinical response and inter-facility transport.

4.4.2 Perform responsibilities of Provider in a spirit of cooperation and collaboration with the EMS Agency and the County Exclusive Operating Area ambulance provider.

4.4.3 Implement and insure adherence to the policies, guidelines and procedures of the EMS Agency as set forth in the Santa Clara County Prehospital Care Manual and all other policies, procedures and guidelines related to emergency medical services providers.

4.4.4 Comply with all applicable state and federal laws and regulations with respect to the provision of emergency medical services in Santa Clara County.

4.4.5 Place authorized units into service as identified in the County's asset permitting process and operates units as authorized.

4.4.6 Equip each approved ALS/paramedic unit with at least one portable radio capable of voice communications with base hospitals and transportable to the patient's side for the purpose of receiving direct medical control from the Base Hospital (currently, Santa Clara Valley Medical Center). Each radio shall meet the technical requirements as specified by the EMS Agency.

4.4.7 Equip each approved ALS/paramedic and BLS unit with at least one portable radio capable of voice communications with Santa Clara County Communications on the designed emergency medical services dispatch, command, and tactical channels; the EMS Agency, and Rural/Metro for the purpose of EMS System coordination.

4.4.8 Provider agrees to be subject to medical control by the local EMS agency, as specified in Health & Safety Code Section 1798 et seq., and shall comply with policies and procedures enacted by the local EMS agency in the administration of the local EMS System, and to be subject to the provision of medical direction by the County to the Provider as related to the provision of Basic Life Support Services at the Emergency Medical Technician level that exceed Health and Safety Code Sections 1797.182 and 1797.183 as applicable.

4.4.9 Have a designated physician or equivalent licensed provider (nurse practitioner or physician assistant) approved by the EMS Medical Director to address quality improvement matters. This position is not authorized to provide medical direction, but is to assist in clinical assurance and continuous quality management activities. If a non-physician is designated above, a physician shall be retained to authorize narcotic procurement and control as required by law.

4.4.10 In collaboration with the EMS Agency, Provider may participate in research endeavors and other programs, including, but not limited to, pilot studies.

4.4.11 In accordance with Health and Safety Code Section 1797.153 access all Medical Health (EMS) Mutual Aid through the Medical Health Operational Area Coordinator (MHOAC) via the County EMS Duty Chief.

1. This includes, but is not limited to requests for ambulances, medical personnel, supplies, equipment, and services.
2. Mutual aid related to paramedic staffed apparatus, other than ambulances, shall be managed through the Operational Area Fire and Rescue Coordinator. The Operational Area Fire and Rescue Coordinator shall notify the EMS Duty Chief as soon as possible and practical when paramedic resources are requested from or in to the County.

3. In order to facilitate and coordinate appropriate Operational Area Mutual Aid effectively and efficiently, nothing in this agreement shall limit the ability of the Operational Area Fire and Rescue Mutual Aid Coordinator and the Medical Health Operational Area Coordinator from agreeing to an alternative resource request process that will benefit the Operational Area.

4.4.12 Maintain, in accordance with applicable State law, licensing, certification, and accreditation of all ALS and basic life support personnel.

4.4.13 The EMS System (or other replacement system approved by the County) shall be online and available to dispatch center personnel at all times and/or available through a link to a computer aided dispatch system or transmitted from EMS System via electronic data transfer to field personnel as approved by the County.

4.4.14 Provider will participate in the Bay Area Urban Area Security Initiative funded, CAD-CAD/CROP project in order to transmit CAD data from Provider to County Communications. The transmission of data is to reduce call processing time thus reducing ambulance response times and to provide performance data reporting to the County. Provider agrees to cooperate with County Communications to complete implementation of fire/medical CAD programming. Should Provider discontinue participation in the project, Provider agrees to implement, at provider's cost, no less than a one-way CAD data link from Provider's dispatch center to County Communications by June 30, 2016.

4.4.15 Coordinate the mitigation of potential or actual emergency events with the EMS Agency (through the EMS Duty Chief or other assigned staff) when a medical or health threat exists.

4.4.16 Process emergency medical services calls through a County Authorized Emergency Medical Dispatch (EMD) program in accordance with Santa Clara County Prehospital Care Manual.

4.4.17 Deliver on-scene care supportively and cooperatively with Rural/Metro and/or other EMS System participants. This may include, but is not limited to, accompanying the patient to the hospital in the ambulance when necessary.

4.4.18 Actively participate in disaster and emergency medical services surge planning and related drills, simulations, and exercises quarterly, as resources allow.

4.4.19 Respond to the best of Provider's ability and to the extent necessary and appropriate to any disaster, emergency medical services surge event, proclaimed or not.

4.4.20 Ensure Provider's personnel remain current and competent in the performance of EMT and/or paramedic skills as applicable.

4.4.21 Coordinate routine public information as related to the services provided under this Agreement with the County. Incident related public information shall be managed in accordance with the Standardized Emergency Management System.

4.5 Advanced Life Support Emergency Ambulance Services. Public safety responders (department of public safety/fire departments) provide the majority of basic and advanced life support first responder services in the County; the County's Exclusive Operating Area agreement with Rural/Metro does not enable fire department providers to provide ambulance transportation under routine circumstances. The use of fire department ambulances shall be operated in accordance with Santa Clara County Prehospital Care Manual and in accordance with Annex A: Santa Clara County EOA Fire Department Emergency Ambulance Authorization attached to this Agreement and incorporated by reference.

4.6 First Responder Funding. The Provider is eligible for first responder funding. Performance criteria required to receive funding is identified in Annex B: First Responder Funding in the Santa Clara County Exclusive Operating Area, attached to this Agreement and incorporated by reference.

## ARTICLE V

### INDEMNIFICATION AND INSURANCE

5.1 Indemnification. Provider agrees to defend, indemnify, protect, and hold County and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to County's or Provider's employees, agents, or officers which arise from, or are caused, or claimed to be caused by the acts, or omissions of Provider and its agents, officers, in performing, providing, manufacturing, or supplying the work, services, product, or equipment relating to this Agreement, and all expenses of investigating and defending against same; provided, however, that Provider's duty to indemnify and hold harmless shall not include any claims or liability arising from the sole negligence or willful misconduct of the County, its agents, officers, or employees.

5.2 Insurance. Provider shall comply with the insurance requirements attached as Exhibit H.

## ARTICLE VI

## COMPLIANCE WITH STATE STANDARDS AND COUNTY EOA

6.1 Compliance with State Standards. The Parties agree to comply with the California Health & Safety Code, including, but not limited to, sections 1797.201; 1797.204; 1774.224; 1797.226, as they now exist or as they may be amended from time to time. Should any amendment of the Health & Safety code materially affect this Agreement, the Parties may consider amending this Agreement.

6.2 Compliance with County EOA. This agreement may be amended from time to time or immediately if the County's agreement with Rural/Metro is modified or terminated, to ensure its application to then current conditions, policies, and protocols and provisions of the County's Exclusive Operating Area.

## ARTICLE VII

### MISCELLANEOUS PROVISIONS

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

7.2 Governing Law, Venue. This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

7.3 Assignment. No assignment of this Agreement or of the rights and obligations hereunder shall be valid without the prior written consent of the other Party.

7.4 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.

7.5 Independent Provider Status. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, between either Party to this Agreement. The Provider understands and agrees that all Provider employees rendering prehospital emergency medical care services under this Agreement are, for purposes of Workers' Compensation liability, employees solely of the Provider and not of County.

7.6 Notices. Any and all notices required, permitted, or desired to be given hereunder by one Party to the other shall be in writing and shall be delivered to the other Party electronically and either personally or by United States mail, certified or registered, postage prepaid, return receipt requested, to the Parties at the following addresses and to the attention of the person named.

The EMS Agency Contract Manager shall have the authority to issue all notices which are required or permitted by County hereunder. Provider shall address all matters related to this Agreement, including notice, to the Contract Manager. Addresses and persons to be notified may be changed by one Party by giving at least ten (10) calendar days prior written notice thereof to the other. Notices to County shall be addressed as follows:

911 Provider Contract Manager  
County of Santa Clara  
Emergency Medical Services Agency  
976 Lenzen Avenue, Suite 1200  
San Jose, California 95126

Notices to Provider shall be addressed as follows:

Thomas Williams, City Manager  
City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, California 95035

#### 7.7 Dispute Resolution.

- 1) The Provider shall name specific individuals within the Provider's agency, upon execution of this Agreement, who are authorized to assist the EMS Agency with dispute resolution under this Agreement.
- 2) The Provider shall respond to written requests of the EMS Agency for information regarding any perceived dispute within five (5) business days, unless otherwise mutually agreed, following receipt of such request.
- 3) The Provider is encouraged to resolve normal day-to-day operational concerns directly with involved parties (other EMS System providers, hospitals, etc.). If a dispute is not resolved at this level, the Provider may refer it to the EMS Agency Contract Manager for further review and action.
- 4) Disputes perceived by the Provider to have a system-wide impact should be referred directly to the EMS Agency.

7.8 No Third Party Rights. No provision in this Agreement shall be construed to confer any rights to any third person or entity.

7.9 Partial Invalidity. If for any reason, any provision of this Agreement is held invalid, the remaining provisions shall remain in full force and effect.

7.10 Amendment. No addition to or alteration of the terms of this Agreement, whether by written or verbal understanding of the Parties, their officers, agents, or employees, shall be valid unless made in the form of a written amendment to this Agreement which is formally approved and executed by the Parties.

7.11 County No-Smoking Policy. Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

7.12 Debarment. Provider certifies that (i) employees who provide services hereunder have not been convicted of a criminal offense related to health care and that they are not listed by any federal or state agency as debarred, excluded or otherwise ineligible for participation in federal or state funded health care programs; (ii) Provider has performed an appropriate screen of these employees prior to making this certification; and (iii) it will screen all new employees who provide services under this Agreement. Provider certifies that Provider has not been convicted of a criminal offense related to health care, nor is Provider listed by any federal or state agency as debarred, excluded or otherwise ineligible for participation in federal or state funded health care programs. Provider agrees that if any of its employees providing services under this Agreement are convicted of a crime related to health care or debarred, such employees shall be removed from any responsibility or involvement in the provision of services under this Agreement once the criminal conviction or debarment is final. Provider shall notify EMS Agency of the pendency of such charges or proposed debarment or exclusion against it or against Provider's employees. Provider will indemnify, defend and hold harmless EMS Agency for any loss or damage resulting from Provider's or Provider's employees' criminal conviction, debarment or exclusion.

7.13 Nondiscrimination. Parties shall 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; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Parties shall 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 shall the parties discriminate in the provision of services provided under this contract 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 WITNESS WHEREOF, this Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 2011 by the County of Santa Clara, and the City of Milpitas.

COUNTY OF SANTA CLARA

By: \_\_\_\_\_  
Dan Peddycord  
Public Health Department, Director

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_  
Jennifer S. Sprinkles  
Deputy County Counsel

APPROVED:

By: \_\_\_\_\_  
Emily Harrison  
Deputy County Executive

CITY OF MILPITAS

By: \_\_\_\_\_  
Thomas Williams  
City Manager

APPROVED AS TO FORM

By: \_\_\_\_\_  
Mike Ogaz  
City Attorney

Attachments:

- Annex B: First Responder Funding in the Santa Clara County Exclusive Operating Area
- Exhibit H: Insurance

## **Annex B**

### **First Responder Funding in the Santa Clara County Exclusive Operating Area**

#### **I. PURPOSE OF FUNDING**

This Annex is intended to identify the criteria and processes related to Provider access to available first responder funding within the Santa Clara County Exclusive Operating Area (EOA). Fire departments operating within the EOA must be compliant with the provisions of the *911 Emergency Medical Services Provider Agreement* in order to be eligible for the funding opportunities afforded herein.

Provider's participation in this funding opportunity is voluntary. However, in order to receive funding, the performance criteria detailed herein must be met. Providers that choose to terminate the Agreement shall be responsible for any liquidated damages incurred while performing under the Agreement, and damages shall not exceed the allocated funding.

In the event of termination of the agreement between the County and Rural/Metro or termination of the Agreement between the County and Provider, all applicable funding opportunities will cease.

Funding is provided for meeting specific performance standards that benefit the EMS System.

#### **II. ALLOCATIONS BY COUNTY**

By July of each year, the County will issue a notice indicating the maximum amount of funding available to each Provider. The amount of eligible funding will be determined using a formula that considers, but is not limited to, increases in EOA authorized billing charges, Consumer Price Index changes, and the Provider's EMS call volume. Annual allocations may increase, remain the same, or decrease based on EMS call volume (defined as an EMS call where County EOA ambulance was dispatched), available funds, damages levied, and other factors.

Increases to first responder funding will be determined based on Section 3.5 First Responder Fees of the Agreement between the County and Rural/Metro. First responder program funding shall be subject to increase annually by 3/5 of the authorized rate of the ambulance fee increase. For example, if ambulance rates increase by 5 percent, the first responder stipend will increase by 3 percent that same year. If the ambulance fees do not increase, program funding will not decrease. However, the County shall determine the exact allocation to Provider based on the formula described above.

Any unused allocation of first responder program funding will be deposited into the EMS Trust Fund annually.

First responder funding will be allocated in two areas; *Category A: EMS Resource Management* and *Category B: Response Time Performance*, as specified below. Category A funding allocations will be based on EMS call volume during the past calendar year. Category A funding availability for the first year of this Agreement will be based on Calendar Year 2010 EMS volume as reported to the County through the review process used under the AMR contract/subcontract which expires June 30, 2011. Category B funding will match the amount provided to eligible responders through the AMR subcontract that expires June 30, 2011.

The EMS Agency shall verify compliance with established standards and agreements prior to authorizing the payment of stipends. Rural/Metro shall make quarterly payments (in arrears) equal to one-fourth of the annual stipend to each Provider. The payment will be adjusted for debits and damages.

### **III. CONTINUATION OF FUNDING BEYOND FIVE YEARS**

If Providers wish to request that the first responder funding program continues in the next County EOA service agreement (beyond June 30, 2016); a proposal must be submitted to the EMS Agency Director by December 31, 2013 or later as determined by the EMS Agency.

It is recommended that the Santa Clara County Fire Chiefs Association participate in developing recommendations that address collective fire service issues in addition to any city/department specific proposals. At a minimum the proposal must include the total amount requested, rational for continuation of funding eligibility, exact performance criteria that will benefit the entire Santa Clara County EMS System.

Proposed performance standards must be specific, measurable, attainable, relevant, and time-bound. The proposed methodology must detail how funds would be distributed to participating departments, liquidated damages structures, and/or other financial considerations.

Nothing in this Agreement shall eliminate the ability of each fire department to submit individual recommendations in addition to the collective proposal identified above.

### **IV. CATEGORY A: EMS RESOURCE MANAGEMENT**

The purpose of Category A (EMS Resource Management) is consistent with utilizing CAD to CAD data and associated reporting of event data as well as the continued use of Emergency Medical Dispatch (EMD) and the Medical Priority Dispatch System (MPDS) to more effectively and efficiently deploy and utilize emergency medical resources.

Category A funding is calculated using the following formula:

$$\frac{[\text{Total Funds Allotted for EMS Resource Management}]}{[\text{Previous Calendar Year Total EMS Events for all First Responder Agencies}]} \times [\text{Previous Calendar Year Total EMS Events for Individual First Responder Agency}] = [\text{Total Allotment for Current Calendar Year}]$$

Example:

$$\frac{[\$100]}{\text{Allotted Funds}} \div \frac{[50]}{\text{CY10}} \times \frac{[10]}{\text{CY10}} = \frac{[\$20]}{\text{CY11}}$$

In order to receive funding, Provider must meet the performance standards described herein.

Performance standards in this section include the following:

1. Reduction in Unnecessary Ambulance Response
2. Emergency Medical Dispatch Assessment Project
3. Use of Medical Priority Dispatch System

#### **A. Reduction in Unnecessary Ambulance Response**

In order to better allocate County EOA ambulances, Provider agrees to cooperate with the County and Rural/Metro to reduce unnecessary ambulance dispatches and/or cancel ambulances when appropriate.

In order to facilitate this process, Provider shall submit biannual reports demonstrating a review of all calls that resulted in no patient being transported. At a minimum this report shall contain (1) total number of responses where a patient was not transported, (2) the reason the patient was not transported, and (3) the Medical Priority Dispatch System determinant that was used if known. Analysis of this data by the EMS Agency will enable the review of policies and procedures so that adjustments may be made if necessary.

The Provider agrees to work cooperatively with the EMS Agency to develop and implement operational practices to continuously reduce inappropriate ambulance use.

Providers are required to submit the report by the last business day in January (period of July-December) and July (period of January to June) of each year. If Provider fails to provide the report, damages of \$ 250.00 per-day or portion thereof, may be levied by the County, up to a maximum of \$2,500.00 per reporting period. No funds will be made available to the Provider until the report is submitted to the EMS Agency.

**B. Emergency Medical Dispatch Assessment Project**

The purpose of this project is to determine the most effective use of Emergency Medical Dispatching (EMD) and Medical Priority Dispatch System (MPDS) use and to identify objective criteria and establish benchmarks that may be used to improve system efficiencies and patient outcomes. In order to develop a comprehensive recommendation to the EMS Agency, Provider agrees to cooperate with the County and Rural/Metro to assess and make recommendations related to the use of EMD and/or MPDS. The intention of this project is to help provide funding to Provider to work with the EMS Agency to develop, implement and revise the Santa Clara County Prehospital Care Manual and/or standard operating procedures related to EMD. Provider agrees to collaborate with the Santa Clara County Fire Chiefs Association to make recommendations to the EMS Agency related to this project. The EMS Agency shall coordinate this effort and will include other appropriate stakeholders as necessary.

**C. Medical Priority Dispatch System Use**

The use and reporting of MPDS is a critical tool in assessing the type of EMS calls processed through a dispatch center. In addition, the provision of pre-arrival medical and safety instructions to the caller from the dispatcher is a key component in starting medical care as soon as possible.

As fire departments are currently using MPDS, the following performance standards apply for eligibility for funding in this section of Category A funding.

**Table 1: Medical Priority Dispatch System Use**

<b>Period</b>	<b>Standard</b>	<b>Validation</b>
Fiscal Year 2012	In addition to pre-arrival instructions, the Medical Priority Dispatch System is used to initiate call triage no less than <b>30%</b> of the time when use is possible and appropriate.	Yes/No
Fiscal Year 2013	In addition to pre-arrival instructions, the Medical Priority Dispatch System is used to initiate call triage no less than <b>35%</b> of the time when use is possible and appropriate.	Yes/No
Fiscal Year 2014	In addition to pre-arrival instructions, the Medical Priority Dispatch System is used to initiate call triage no less than <b>40%</b> of the time when use is possible and appropriate.	Yes/No
Fiscal Year 2015	In addition to pre-arrival instructions, the Medical Priority Dispatch System is used to initiate call triage no less than <b>45%</b> of the time when use is possible and appropriate.	Yes/No

Fiscal Year 2016	In addition to pre-arrival instructions, the Medical Priority Dispatch System is used to initiate call triage no less than <b>50%</b> of the time when use is possible and appropriate.	Yes/No
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**C.1 Validation/Required Reporting:**

Data reporting for Table 1 shall include (1) the total EMS calls per-month, (2) total number of calls that were processed using MPDS, and (3) the MPDS call determinant that was used. The data must be in computer-readable format, suitable for statistical analysis and integrate with “FirstWatch”. Once CAD/CAD is in place, reporting may be automated. Provider will have 60 days to implement changes to required reporting elements.

**C.2 Liquidated Damages:**

Providers are required to submit the report by the last business day in January (period of July-December) and July (period of January to June) of each year. If Provider fails to provide the report, damages of \$ 250.00 per-day or portion thereof, may be levied by the County, up to a maximum of \$2,500.00 per reporting period. No funds will be made available to the Provider until the report is submitted to the EMS Agency.

If Provider fails to meet the requirements contained in Table 1, 50% of eligible Category A funds will be deducted for each month where compliance was not achieved and the amount of damages deposited in to the EMS Trust Fund. The amount of damages shall not to exceed the total available Category A funding allocation.

Within any consecutive twelve month period, three or more occurrences of meeting less than the required percentage in Table 1 100% of the remaining eligible funds will be deducted as a penalty and placed into the EMS Trust Fund. Continuation of the Provider in the Category A funding eligibility will be restored upon Provider meeting the standards prescribed in Table 1 for no less than three consecutive months and will be at the sole discretion of the County.

**V. CATEGORY B: RESPONSE TIME PERFORMANCE**

Each participating Provider must meet the response time criteria included in Tables 3, 4, and 5 and provide at least one paramedic per-response classified as Charlie, Delta, Echo, or a response that has not been classified and has implemented Emergency Medical Dispatch (Medical Priority Dispatch System) in accordance with Santa Clara County Prehospital Care Manual shall be eligible for funding.

Providers not providing paramedic level service and/or those not operating in accordance with Santa Clara County Prehospital Care Manual related to the clinical aspects of emergency medical dispatch shall not be eligible for funding. An annual allocation will be held in reserve should the Sunnyvale Department of Public Safety

implement a paramedic program within its jurisdiction. Until that time, the funding will be deposited into the EMS Trust Fund and used for Countywide system enhancements. The funds shall not accrue for use by City of Sunnyvale, Department of Public Safety.

**A. Compliance Performance Standard**

Satisfactory compliance is achieved when 90 percent or more of responses in each code of response (both Red Lights and Sirens and non-Red Lights and Sirens) meet the specified response time requirements. The County encourages Provider to utilize EMD to make the best use of its Advanced Life Support units. Provider is encouraged to implement Basic Life Support First Response to 911 emergency medical services calls that are classified as Alpha and Bravo level calls.

Urban, Suburban and Rural/Wilderness classifications are defined by population density. Table 2 identifies the formula for determining each classification.

**Table 2: Population Density for Geographic Areas**

Classification	Population
Urban	>101 people per square mile
Suburban	51-100 people per square mile
Rural / Wilderness	<50 people per square mile

**Table 3: Response Time Requirements in the Urban Response Zone**

Dispatch Classification	Provider Maximum Response Time	Notes
MPDS Classification: Alpha	12:59	First Response unit <i>ALS or BLS</i>
MPDS Classification: Bravo	7:59	First Response unit <i>ALS or BLS</i>
MPDS Classification: Charlie	7:59	First Response ALS
MPDS Classification: Delta	7:59	First Response ALS
MPDS Classification: Echo	7:59	First Response ALS
Non-Triaged or Non-MPDS Classified	7:59	First Response ALS

**Table 4: Response Time Requirements in the Suburban Response Zone**

Dispatch Classification	Provider Maximum Response Time	Notes
MPDS Classification: Alpha	14:59	First Response unit <i>ALS or BLS</i>
MPDS Classification: Bravo	9:59	First Response unit <i>ALS or BLS</i>
MPDS Classification: Charlie	9:59	First Response ALS
MPDS Classification: Delta	9:59	First Response ALS
MPDS Classification: Echo	9:59	First Response ALS
Non-Triaged or Non-MPDS Classified	9:59	First Response ALS

**Table 5: Response Time Requirements in the Rural and Wilderness Zones\***

Dispatch Classification	Provider Maximum Response Time	Notes
MPDS Classification: Alpha	21:59	First Response unit <i>ALS or BLS</i>
MPDS Classification: Bravo	11:59	First Response unit <i>ALS or BLS</i>
MPDS Classification: Charlie	11:59	First Response ALS
MPDS Classification: Delta	11:59	First Response ALS
MPDS Classification: Echo	11:59	First Response ALS
Non-Triaged or Non-MPDS Classified	11:59	First Response ALS

\*Hard to serve areas apply.

## B. Response Time Measurement

The following methods shall be used to measure response times.

### **C. Response Time Clock**

For purposes of measuring response intervals, the Response Time Clock (RTC) shall be the time displayed by Provider's Computer Aided Dispatch (CAD) system.

### **D. Time Intervals for Response Reporting**

Response intervals will be measured from the time the call is dispatched by the PSAP until the Provider's apparatus arrives at dispatched incident location. Response time intervals may also be measured using technologies such as GPS, AVL, proximity reporting, etc. as approved by the County. In situations where Provider has responded to a location other than directly to the scene (e.g. staging areas for hazardous scenes, or non-specific highway locations), arrival "on scene" shall be the time that Provider's apparatus arrives at the designated staging point or other location.

A "dispatch" shall be defined as the broadcast, by any means, of (1) incident location or suspected location and (2) unit identification for a (3) known or suspected call for emergency medical services.

Provider may issue an "alert" prior to the dispatch for the purpose of preparing response personnel and decreasing response time. An "alert" shall be defined as a broadcast, by any means, of (1) incident location or suspected location and (2) information that indicate an emergency medical response may be necessary. The selection and notification of a specific unit shall constitute a "dispatch", not an "alert". If an "alert" is not cancelled or changed into a "dispatch" within sixty (60) seconds of initiation it shall constitute a "dispatch".

If Provider's unit fails to report "on scene," the time of the next communication with Provider's dispatch center will be used as the "on scene" time unless other County approved validation systems are in place to accomplish the same tracking (AVL, GPS, Mobile Data Computers, etc.).

Medically trained first responders, law enforcement officers, authorized communications center personnel, and the County may initiate downgrades or cancellation of Provider response to medical calls. This shall not limit the Provider's ability to continue, cancel, or modify their resources response to the incident.

If Provider is cancelled by an authorized agency, after an assignment has been made but prior to the arrival, the response time clock will stop at the moment of cancellation. If the elapsed response time at the moment of cancellation exceeds the response time requirement for the assigned priority and zone of the call, the unit will be determined to be "late."

If an assignment is downgraded prior to arrival to the scene, the lower priority response time standard will apply.

If an assignment is upgraded prior to arrival on the scene, the response time clock will rest at the time the upgrade is dispatched and compliance with response time standards will be the shorter of (a) the non-Red Lights and Sirens (RLS) response requirement measured from the time the unit was originally dispatched, or (b) the RLS response times measured from the time of the upgrade.

If the elapsed response time at the moment of cancellation is less than the response time requirement for the assigned priority and urbanization coding of the call, the providers response time shall not be included in the aggregate overall fractile response time compliance, but will be reported monthly to the County.

#### **E. Response Time Exceptions and Exemption Requests**

The following responses are automatically exempt from response time calculations: Responses outside the County's EOA; Responses in established Hard to Serve Areas (HSA) as identified in EMS Policy 830, as the same may be amended or renumbered from time to time; and/or substantiated Provider dispatch center failures.

Equipment failures, traffic congestion, unit mechanical failures, and inability to staff units and other causes are not automatically grounds for granting an exemption to compliance with the response time requirements.

In the case of a Multiple Patient Management Plan Activation II or greater, response time performance may be waived by the County.

In the event of a proclamation of local emergency or disaster within the Provider's district or city or by the County of Santa Clara; response time performance may be waived by the County.

If Provider believes that any response or group of responses should be excluded from the compliance calculations due to "unusual factors beyond the Provider's reasonable control," the Provider may provide detailed documentation and request that these runs be excluded from response time calculations and associated damages. Any such request must be made in writing and in accordance with the County's Exemption Review Process. Examples may include, but are not limited to, greater alarm structure or wild land fires, provision of mutual aid.

#### **VI. LIQUIDATED DAMAGES FOR FAILURE TO COMPLY**

The Provider understands and agrees that the failure to comply with any performance standards or other requirements in this Annex will result in loss of benefit to the County and that it will be impracticable to determine the actual amount of damage whether in the event of delay, nonperformance, failure to meet standards, or any other deviation. Therefore, the Provider and County agree to the liquidated damages specified in this Annex.

It is expressly understood and agreed that the liquidated damages amounts are not to be considered a penalty, but shall be deemed, taken and treated as reasonable estimate of the damages. It is also expressly understood and agreed that County’s remedies in the event of the Provider’s breach or any noncompliance, are not limited to this Annex. Chronic failure to comply with the response time or other performance requirements may constitute breach of contract.

Superior response time performance during one part of the month shall not justify inferior response time performance during the remainder of the month.

Responses to requests for service originating outside of the Provider’s service area (excluding automatic aid agreements) will not be counted in the number of total EMS calls used to determine response time under this Agreement.

When Provider responds to another Provider’s jurisdiction as part of an executed automatic aid agreement, the entity holding authority for response shall be responsible for insuring response time compliance and shall pay any applicable damages. All automatic aid agreements related to response to EMS calls must be provided to the County annually for the purpose of verification of responsibility for EMS service coverage to a given areas within the County.

**VII. LIQUIDATED DAMAGES FOR LATE RESPONSES**

Liquidated damages will accrue for each response that exceeds the response time requirements.

**Table 6: Liquidated Damages for Response Time Non-Performance**

<b>RESPONSE TIME PERFORMANCE LIQUIDATED DAMAGES</b>			
<b>Per Response</b>			
<i>Amount that Response Time is Exceeded</i>			Fine per-response
Urban	Suburban	Rural Wilderness	
Up to 2:59	Up to 2:59	Up to 2:59	\$50
3 to 4:59	3 to 4:59	3 to 4:59	\$100
5 - 9:59	5 - 9:59	5 - 9:59	\$250
10 - 14:59	10 - 14:59	10 - 14:59	\$500
15 - 19:59	15 - 19:59	15 - 19:59	\$1,000
20 - 24:59	20 - 24:59	20 - 24:59	\$2,500
25 - 34:59	25 - 34:59	25 - 34:59	\$5,000
35+	35+	35+	\$7,500

Provider's late responses will accrue fines up to, but not exceeding, the amount of the allocated first responder funding for Provider. The liquidated damages amount shall increase according to the number of minutes the unit is delayed past the mandated response time.

### **VIII. PROVIDER FINANCIAL HARDSHIP**

If Provider experiences an unusual hardship resulting from the accumulation of liquidated damages that extends beyond three (3) reporting periods related to the inability to meet the established response time performance criteria, and has implemented a corrective action plan, the Provider may submit a written request for temporary financial relief to the Contract Manager.

This request must clearly identify the reason for the hardship, a proposed corrective action plan (must include actions that have already been completed and additional remedies), and timeline for meeting compliance.

At a minimum the request must include how the Medical Priority Dispatching System (MPDS) has been implemented using the most appropriate resource for the call type; how non-paramedic units have been used on calls classified as Alpha and Bravo; and the reason that Provider has not been able to arrive on the scene in accordance with the established response time criteria.

Requests must be received in writing within fifteen (15) days after the close of the calendar month. Requests not submitted within fifteen (15) days after the close of the calendar month will not be considered. The Contract Manager will review the request and provide a disposition within thirty (30) business days.

### **IX. MONTHLY NON-COMPLIANCE**

Ninety percent (90%) response time compliance in each dispatch classification as adjusted for exemptions shall be considered compliant with this Agreement.

The Provider shall be deemed in material breach of contract if the Provider fails to meet the response time requirements for at least 90% of responses each month for three consecutive months or for four months in any 12 month period. A material breach of contract may result in termination of the ability to participate in the first responder funding program and may result in the forfeiture of first responder funding.

### **X. INCENTIVE FOR SUPERIOR RESPONSE TIME PERFORMANCE**

For every monthly reporting period in which Provider's compliance with response time requirements exceeds 95% for each response time priority classification no per minute liquidated damages shall accrue for the monthly reporting period. All liquidated damages for per call response times shall be forgiven for any month in which Provider meets or exceeds 95% compliance with response time performance standards.

## **XI. REMEDIES**

If circumstances constituting a material breach as set forth above are determined to exist, and the Provider fails to cure such breach, the County shall have all rights and remedies available at law or in equity under the contract, including termination of the Agreement. The County may pursue one or more remedies, at any time; provided, however, that pursuing any remedy shall not be deemed an election of remedies by the County precluding the exercise of another remedy by the County.

## **XII. REQUIRED RESPONSE TIME DATA REPORTING**

Within thirty (30) calendar days of the close of each calendar month, Provider will submit a report detailing its response time performance data during the immediately preceding month (reporting period) in a manner and format acceptable to the County. If a Provider fails to provide the report, damages of \$250.00 per-day or portion thereof, may be levied by the County.

Once a CAD to CAD link has been established that provides data directly to FirstWatch, the Provider shall provide to the County daily response time performance data in a format approved by the County, transmitted each day.

## **XIII. PAYMENTS FOR DAMAGES**

The total amount of damages will be deducted from the payment due to the Provider and will be deposited into the EMS Trust Fund.

## **XIV. APPEAL OF DECISION**

In the event that Provider disagrees with the determination by the Contract Manager related to appropriate use and/or issuance of penalty, a petition may be made to the Contract Administrator within 30 business days of receipt of Contract Manager's decision.

The petition must be submitted in writing and contain the basis for the appeal, any appropriate evidence, and requested remedy.

The Contract Administrator or delegate may request additional information or base a decision on materials that have been provided by the Provider and EMS Agency staff. The decision of the Contract Administrator shall be final.

## EXHIBIT H

### INSURANCE

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

#### A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed.

#### B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

#### C. Insurance Required

1. Commercial General Liability Insurance – for bodily injury (including death) and property damage which provides limits as follows:
  - a. Each occurrence - \$5,000,000
  - b. General aggregate - \$5,000,000
  - c. Products/Completed Operations - \$5,000,000
  - d. Personal Injury - \$5,000,000
  
2. General liability coverage shall include:
  - a. Premises and Operations
  - b. Products/Completed
  - c. Contractual liability, expressly including liability assumed under this Agreement.

## EXHIBIT H

- d. Personal Injury liability
  - e. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

**Additional Insured Endorsement**, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than five million dollars (\$5,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.
- c. Coverage under the United States Longshoremen's and Harbor Workers' Act shall be provided when applicable.

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than five million dollars (\$5,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than one hundred thousand dollars (\$100,000) per occurrence/event.

7. Claims Made Coverage

## EXHIBIT H

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following conclusion of the Agreement, including the requirement of adding all additional insureds.
- c. If Insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with the Agreement.
- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

### E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement.