

**INTERLOCAL AGREEMENT BETWEEN WISE COUNTY AND
THE CITY OF NEWARK FOR
EMERGENCY MEDICAL SERVICES**

THE STATE OF TEXAS §

COUNTY OF WISE §

FISCAL YEAR 2012-2013

THIS INTERLOCAL AGREEMENT (“Agreement”) is made and entered into by and between Wise County, a political subdivision of the State of Texas; to be carried out by Wise County Emergency Services (the “WCEMS”), and the City of Newark, Texas, a municipal corporation within Wise County (“City”), for establishing Pre-hospital emergency medical services within the boundaries of said City.

RECITALS

WHEREAS, Texas Government Code, Chapter 791, the Texas Interlocal Cooperation Act, provides that one or more public agencies may contract with each other for governmental functions and services, including police protection services; public health and welfare; administrative functions; and other governmental functions in which the contracting Parties are mutually interested, in order to provide a governmental function or service that each Party to the contract is authorized to perform individually;

WHEREAS, Section 774.001 of the Health and Safety Code requires an “Agreement” to be executed between the governmental entities before emergency services can be rendered by WCEMS within the City and if the city is temporarily unable to provide its own emergency services and an actual emergency exists in the city.

NOW, THEREFORE in consideration of the above recitals, mutual benefits and promises each to the other made herein, the parties named above do hereby agree as follows:

PUBLIC PURPOSE

City, under its current system, contracts for pre-hospital emergency ambulance services. This system is designed to align the interest of the City with those of the community it serves. In order to facilitate the City's system, City hereby engages WCEMS, and WCEMS hereby accepts such engagement, to provide pre-hospital emergency ambulance services to the City, provided this service does not impede reasonable protection and coverage for the WCEMS jurisdiction.

SERVICES

- a. Providing WCEMS will be able to provide reasonable protection for the persons in its jurisdiction, WCEMS will provide emergency pre-hospital emergency medical services and emergency transfer services in the City's service area. As used in this Agreement, the term "City's service area" shall mean the city limits of the City and legally bound or extended service areas. Notwithstanding the foregoing, Services shall not include: aero medical helicopter services.
- b. In the event of a disaster, as determined by the appropriate authority having jurisdiction under applicable law, the WCEMS will fully cooperate and assist the City, or any other authority having jurisdiction, in the provision of the Services set forth herein.
- c. WCEMS expressly agrees that, in the event of a default, WCEMS will work with the City to assure continuous delivery of services regardless of the underlying cause of default, under the same terms and conditions as set forth herein until the resolution of the default has been satisfied or the contract is terminated.

COMPENSATION

- a. Other than permitting WCEMS to bill patients for this service in accordance with this agreement, the City will not impose any surcharge or fees to the patients for services rendered by WCEMS under this agreement.
- b. Charges accrued for patient care and/or transportation will be billed to the patients insurance, and if that patient is a resident of Wise County the payment from the insurance will be accepted as payment in full.
- c. If the patient resides out of Wise County, then the patients insurance will be billed and the patient will be responsible for any and all additional charges not covered by insurance.
- d. At no time will the City be responsible for payment of a bill for an employee of the City over and above what the employees insurance and or workers comp will pay.
- e. In the event that a Wise County Resident has no insurance that will cover EMS care and or transportation, then this patient will not be billed.
- f. Nursing homes and hospitals will be responsible for payment of EMS bills that are not paid by the patients insurance when the insurance deemed that the patient could have been transported by other means. This usually occurs when a nursing home resident needs a ride back to the nursing home after being seen at the hospital. These patients can usually be transported in a wheelchair van or a car.

g. WCEMS, and not the City, shall be solely responsible for paying all required federal, state and local taxes related to any amounts received by WCEMS pursuant to this Agreement.

INDEPENDENT CONTRACTOR

WCEMS shall at all times be an independent contractor. Nothing in this Agreement shall at any time be construed so as to create the relationship of employer and employee, principal and agent, partnership, or joint venture as between WCEMS and City. Neither party shall have any authority to incur any obligation or bind or commit the other party to any agreement, contract, or commitment or to waive, modify, or amend any rights of either party under any agreement, contract, or commitment, except as expressly authorized in writing by other party. Neither party shall in any manner be answerable or accountable for: (i) any violation by the other party of any federal, state or local laws, regulations, ordinances, rules or orders; or (ii) for any injury, loss or damage arising from or out of any act or omission of the other party.

GENERAL APPORTIONMENT OF RESPONSIBILITY AND IMMUNITY

In the event of joint or concurrent negligence of the parties, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waving any governmental immunity available to either party individually under Texas law. The City shall be responsible for its sole negligence. The County shall be responsible for its sole negligence. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person.

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY ATTORNEY FEES, SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY OR PUNITIVE DAMAGES.

TERM AND RENEWAL

The effective date of this agreement shall be when both parties have signed and executed this document within the 2012-2013 fiscal year. The contract term shall be for one (1) year and expire at 11:59 pm September 30, 2013. This agreement will automatically renew at midnight October 1st, 2013 and every year thereafter this initial term unless a thirty (30) day notice of cancellation is sent prior to the expiration of the annual term.

NOTICE OF NONAPPROPRIATION

If, for any fiscal year, WCEMS fails to appropriate funds in amounts sufficient to pay or perform its obligations under this Agreement, WCEMS shall endeavor to provide thirty (30) days notice of its intent not to appropriate the necessary funds for its performance of obligations under this Agreement.

TERMINATION

- A. **By Mutual Agreement:** This Agreement may be terminated by mutual agreement of the City and the County, as evidenced by a written termination agreement.
- B. **For Nonappropriation of funds:** As mentioned above, if the Parties fails to appropriate funds necessary for performance of the obligations under this Agreement, the other Party may terminate this Agreement.
- C. **By Either party:** This agreement may be terminated at any time for convenience upon sixty (60) days written notice to the other party.
- D. **Default:** In the event a party to this agreement fails to perform an obligation set forth herein, the aggrieved party shall give the defaulting party a sixty (60) day written notice of default with an opportunity to cure such default within that time period. If defaulting party fails to cure such default during the stated period, the Agreement shall terminate and the City shall assume responsibility for its Pre-hospital emergency services.

DISPUTE RESOLUTION

- A. **Dispute Resolution Process.** Before commencing formal legal proceedings concerning any dispute arising under or relating to this Agreement, or any breach thereof, the Parties agree to observe the following Dispute Resolution Process.
- B. **Notice.** The disputing party shall file a written complaint which contains sufficient detail to clearly identify the problems giving rise to the dispute, and the responding Party shall have a reasonable opportunity to respond, in accordance with the default procedures.
- C. **First Resolution Meeting.** After consulting with and obtaining input from the appropriate individuals so as to facilitate a complete discussion and proposed solution, the Parties shall schedule a meeting and designate representatives to attend such meeting to attempt to facilitate an agreed resolution.
- D. **Second Resolution Meeting.** If the Parties' designated representatives cannot reach an agreed resolution, the following representatives shall meet to discuss the matter: City: City Manager and/or Mayor; County: County Commissioner and/or County Judge.
- E. **Successful Resolution.** If resolution is made it shall be reduced to a written agreement to be approved by each side's governing body. If approved, the written agreement will become an amendment to the original agreement. However, it will not supersede any term or condition except those dealing with the subject matter of the dispute.
- F. **Unsuccessful Resolution.** If all above options are completed and the Parties are unable to reach a resolution, either Party may pursue all legal and equitable remedies available to it under Texas law.

GENERAL PROVISIONS

- A. **Severability Clause.** The Parties intend for the various provisions of this Agreement to be severable so the invalidity, if any, of one or more sections of this Agreement shall not affect the validity of the remaining provisions of the Agreement.
- B. **Counterparts.** This document may be executed in any number of original signature counterparts, each of which shall for all purposes be deemed an original, and all such counterparts shall constitute one and the same document.
- C. **Notices.**

To County: Any Notice permitted or required to be given to the County hereunder must be in writing and may be given by Certified United States Mail, Return Receipt Requested, postage prepaid, addressed to:

Wise County EMS
P.O. BOX 1509
Decatur, Texas 76234

To City: Any notice permitted or required to be given to the City hereunder must be in writing and may be given by Certified United States Mail, Return Receipt Requested, postage prepaid, addressed to:

CITY OF NEWARK
P.O. BOX 156
NEWARK, TX 76071

Any notice permitted or required to be given hereunder shall be deemed to have been given upon deposit of the notice in the United States Mail as aforesaid.

- D. **Authority of Signatories.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.
- E. **Governing Law/Venue.** This Agreement shall be interpreted in accordance with the laws of the State of Texas and Wise County is the proper venue for any action regarding this contract.
- F. **Permits and Licenses.** The parties shall be responsible for and hold any and all required federal, state, and local licenses required to perform the duties under this Agreement, as may be required of that party. In addition, such party will make all necessary payments for licenses and permits to conduct its business and duties under this Agreement. Each party will assure that all necessary renewals are made by it as necessary and in a timely manner. The

WCEMS will be responsible for assuring that all of its personnel hold valid state and local certifications at all times required to meet WCEMS's responsibilities under this Agreement.

- G. **Notice of Litigation.** Within seventy-two(72) hours after receipt of notice or knowledge of litigation affecting the Services provided under this Agreement, the City, WCEMS, or either parties' officers or employees, the party receiving such notice shall notify the other party of the same.
- H. **Entirety of the Agreement and Modifications:** This agreement represents the entire and integrated agreement between the City and the County and supersedes all prior negotiations, representations and/or agreements, either written or oral. This agreement may be amended only by mutual agreement of the parties made in writing.

THIS EMERGENCY MEDICAL SERVICE AGREEMENT is made and entered into as of the 1st day of October, 2012 or the dates signified below by and between the CITY of NEWARK and WISE COUNTY to be performed by WISE COUNTY EMERGENCY MEDICAL SERVICES, ("WCEMS").

CITY OF NEWARK

WISE COUNTY

DATE: 12/06/2012

DATE: 01/02/13

By: [Signature]

By: [Signature]

Title: Mayor

WISE COUNTY JUDGE

By: [Signature]

Wise County Emergency Services