

**AGREEMENT FOR PROVIDING
FIRST RESPONDER SERVICES**

STATE OF TEXAS

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COUNTY OF HILL

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This Agreement for Providing **FIRST RESPONDER SERVICES** (the “Agreement”), by and between **HILL COUNTY EMERGENCY SERVICES DISTRICT NO. 2** (the “District”), a political subdivision of the State of Texas, organized and operating pursuant to the provisions of Section 48-e, Article III of the Texas Constitution and Chapter 775 of the Health and Safety Code, as amended (the “Act”) and _____ (the “Department”) (collectively, the “Parties”), a Texas non-profit corporation duly organized and operating under the laws of the State of Texas, shall become effective as of the date of execution by the Parties.

WITNESSETH

WHEREAS, the District is a duly organized emergency services district, and a political subdivision of the State of Texas, created to protect life and health, and for such other purposes as determined by the District under Chapter 775 of the Act, with full authority to enter into and perform any and all necessary contracts in order to carry out the objects of its creation; and

WHEREAS, pursuant to Section 775.031 of the Act, the District has the authority to enter into such necessary contracts with others, including incorporated cities, towns or other government entities, and volunteer fire organizations, whereby certain emergency services and other services may be made available to the District as the District shall determine; and

WHEREAS, the District desires to secure first responder emergency medical services (hereinafter, “First Responder Services” as defined in Section 1.01) for the geographic area of the District; and

WHEREAS, the District currently does not have any personnel to provide First Responder Services directly; and

WHEREAS, the District has determined that it is in the best interests of the residents and the property owners of the District to enter into a contract with the Department for the provision of First Responder Services; and

WHEREAS, the Department currently owns facilities and equipment and has the requisite personnel (paid and/or volunteer) to provide First Responder Services and is willing and able to provide First Responder Services to the District’s residents and property owners for the consideration hereinafter provided;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants hereinafter contained, the parties hereto agree each with the other as follows:

ARTICLE I.
DEFINITIONS

Section 1.01 Definitions

In addition to other terms defined herein, the following terms shall have the meanings assigned to them in this Article I whenever they used in this Agreement.

- A. Board. The Board of Emergency Services Commissioners for the District.
- B. Agreement. This Agreement and any and all amendments or supplements hereto.
- C. Facilities. The buildings, equipment, personal property and real property utilized by the Department to provide the services required under this Agreement.
- D. Service Area. The geographic area of the District, as more particularly described in Exhibit "A", attached hereto and incorporated herein for all purposes, for which the Department will provide First Responder Services under this Agreement.
- E. First Responder Services. All first responder emergency medical services used to initially respond on-scene to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury, as set forth and further defined under Section 773.001 of the Act.

Section 1.02 Construction of Terms

If appropriate, in this Agreement words of the singular number shall be considered to include the plural, words of the plural shall be considered to include the singular, and words of the masculine, feminine, and neuter genders shall be considered to include the other genders.

ARTICLE II.
REPRESENTATIONS AND WARRANTIES

Section 2.01 District's Representations and Warranties.

The District represents and warrants that the District is a duly constituted political subdivision of the State of Texas created and operating pursuant to the Act, and has the authority to enter into this Agreement and the transactions contemplated hereby, and to carry out its obligations.

Section 2.02 Department's Representations and Warranties

- A. The Department is a non-profit corporation duly incorporated and validly existing and in a good standing under the laws of the State of Texas and is not in violation of any provisions of its Articles of Incorporation, its By-laws, or laws of the State of Texas that are relevant to the transactions contemplated hereby.
- B. The Department has full corporate power and authority to execute and deliver this Agreement and has, by proper corporate action, duly authorized the execution and delivery of this Agreement.

C. Neither the execution or delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms or conditions of this Agreement conflicts with or results in a breach of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Department is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever on any property or assets of the Department.

D. The Department is familiar with the boundaries of the Service Area and agrees to provide First Responder Services to all residents, commercial interests, and others found within the Service Area.

E. The quality of the First Responder Services to be provided to the residents, commercial interests, and others found within the Service Area will be equal to or better than the quality of the first responder emergency medical services provided within the Department's individual service area before the effective date of this Agreement as evaluated by the District.

ARTICLE III. SERVICE TO BE PROVIDED

Section 3.01 General

A. During the term of this Agreement, the Department agrees to provide all necessary personnel and equipment for the First Responder Services within the Service Area as specified in this Agreement on a 24-hour-a-day, 7-day-a-week basis.

B. The Department shall at all times conduct its activities in accordance with all current statutes, rules and regulations of any and all governmental bodies and shall maintain and comply with all permits, consents and certificates that are required by any governmental body for the Department to be authorized to provide the First Responder Services. The Department shall at all times during the term of this Agreement operate pursuant to and in compliance with the medical first response protocols approved by the District. The Department shall provide the First Responder Services in accordance with all other standard operating guidelines, training requirements and programs, medical protocols, dispatch protocols, and other procedures that are in effect in the District as of the effective date of this Agreement and as amended thereafter. In the event the Department shall fall below compliance with any of the requirements set forth in this paragraph, the Department shall notify the District in writing (in care of the District's Board President and legal counsel) within ten days after the Department becomes aware of such non-compliance.

C. The Department shall maintain the District's Facilities used by the Department in a state of good repair at all times and shall comply, so far as practicable, with applicable sections of National Fire Protection Association.

D. Notwithstanding anything in this Agreement that may be construed to the contrary, the Department and all of its personnel (paid or volunteer) or agents shall at all times be independent contractors regarding the First Responder Services provided or not provided to the District. The District shall look to the Department for results only and the District shall not direct or oversee the Department or its agents, members, employees or volunteers in the delivery

of the First Responder Services, or the manner, means, or methods by which the First Responder Services are performed, or the manner in which the Department conducts its internal operations, except for financial and fiscal matters and compliance with the requirements of this Agreement, including, particularly, the credentials and authorizations required for the performance of the First Responder Services.

E. The Department Chief, or his/her designated representative, shall be the liaison with the District for operations issues in connection with the provision of First Responder Services under this Agreement.

F. The Department Chief, or his/her designated representative, shall determine what constitutes an emergency for a response by the Department.

Section 3.02 Personnel

A. The Department shall provide all personnel necessary to provide the First Responder Services and shall be solely responsible for the compensation, training, hiring and firing, and discipline of such personnel. The Department shall utilize only properly credentialed, responsible, competent and well-trained personnel and agrees to conduct regularly scheduled training sessions to ensure a high level of competency.

B. The Department shall implement and maintain a personnel evaluation and review policy to ensure compliance with this section, which policy shall address, in addition to all other matters relevant to compliance with this section, issues of discrimination, sexual harassment, and chain of command. The policy shall be delivered to the District not later than 90 days following the effective date of this Agreement. The Department shall notify the District in writing (in care of the District's Board President and legal counsel) within ten days of an occurrence when the level of personnel in the Department declines by more than twenty per cent (20%) from the level of the Department as of September 30, 2010.

Section 3.03 Reporting Requirements

A. Quarterly Report. The Department shall deliver to the Board a quarterly written report setting forth the number and nature of service calls originating from the Service Area, including the number and nature of calls the Department responded to as well as those the Department did not respond to and for which third-party mutual aid was requested.

B. Annual Report. The Department shall provide to the Board annually, in the month of January, a report covering the District's prior fiscal year (October 1 through September 30) that sets forth the number and nature of calls for First Responder Services originating from the Service Area and a roster of all of the Department's personnel, noting thereon the respective state certifications held by the personnel and the percentage of calls to which each member responded.

ARTICLE IV.
FINANCES AND CONSIDERATION

Section 4.01 Consideration

A. In consideration for the First Responder Services provided by the Department under this Agreement, the District agrees to provide funds to the Department as available from the District's tax revenues or other sources available to the District in an amount or amounts to be based on the District's approved annual budget. The specific amount and method of disbursement shall be determined by the Board in its sole discretion prior to the end of each fiscal year preceding the term for which the disbursements are to be made.

B. All funds to be disbursed pursuant to this Agreement are subject to appropriation, and nothing in this Agreement shall obligate the District to allocate the full amount of funding requested by the Department. Under no circumstances has the District agreed to pay funds to the Department beyond any one-year term.

C. The Department agrees to provide the District with all records regarding operations and finances that the Board deems necessary in determining the amount of compensation to be paid to the Department under this Agreement.

Section 4.02 Budget and Revenues

A. Each year during the term of this Agreement, the Department shall submit to the Board during its regularly scheduled June board meeting, a proposed operating budget for the Board's review, modification, and approval, in the Board's sole discretion.

B. The operating budget shall be automatically modified and amended based upon the revenues actually received by the District. Should the revenues actually received by the District be less than expected or budgeted, or should the District be unable to meet its financial obligations to the Department under this Agreement, the Department shall adjust its budget accordingly. Any adjustment of the Department's budget (and related adjustment of the First Responder Services provided) made pursuant to this paragraph due to tax fund availability shall not in and of itself be the basis for a claim against the District or the Department for breach of this Agreement.

C. As unexpected or emergency expenses are incurred by the Department in connection with providing the First Responder Services, the Department may submit to the Board a request for additional funds for the District's review and action. All such requests for additional funds shall be in writing and shall describe in detail the unexpected or emergency event causing the Department to incur the additional expense.

Section 4.03 Reimbursement by Insurance Carriers/Patients

Any funds received by the Department during the term of this Agreement from private insurance carriers or directly from a customer in payment for First Responder Services shall be reported to the District not later than 45 days following the Department's receipt of such funds.

ARTICLE V.
INSURANCE AND INDEMNIFICATION

Section 5.01 Insurance

The Department shall insure all Facilities and property reasonably required to provide the First Responder Services hereunder or cause same to be insured for loss or damage of such kind usually insured against by entities similarly situated.

Section 5.02 Indemnification

The Department shall indemnify and hold harmless the District and its officers, members, employees, attorneys and agents against any and all losses, costs, damages, expenses, and liabilities of whatever nature (including but not limited to reasonable attorney fees, litigation and court costs, amounts paid in settlement and amounts paid in discharge of judgments) directly or indirectly resulting from or arising out of the provision of the First Responder Services by the Department.

ARTICLE VI.
MISCELLANEOUS

Section 6.01 Competitive Bidding

For any expenditure exceeding \$50,000.00 (any portion of which involves funds appropriated by the District) for any one item or service or for more than one of the same or a similar type of items or services in a calendar year, upon request of the District, the Department shall request competitive bids on behalf of the District on such items to be purchased or leased or services to be performed. The Department shall comply with all State laws applicable to competitive bidding by an emergency services district, particularly Section 775.084 of the Act.

Section 6.02 Facilities

A. Title. Title to all equipment owned or purchased by the District shall at all times remain with the District. Title to all equipment purchased with funds provided under this Agreement or provided to the Department under this Agreement shall at all times remain with the Department.

B. Maintenance. The Parties hereto agree that during the term of this Agreement, the Department shall operate, maintain and repair any and all Facilities used to provide the First Responder Services.

Section 6.03 Independent Contractor/No Partnership or Joint Venture

Nothing in this Agreement shall be construed to make either party the partner or joint venturer of or with the other party. It is further agreed that in the performance of all obligations undertaken by the Department under this Agreement, the Department is an independent contractor with the right to supervise, manage, control, and direct the performance of the First Responder Services required under this Agreement.

Section 6.04 Assignment and Modification

This Agreement shall not be assignable by the Department, in whole or in part, without obtaining the prior written consent of the District. Further, this Agreement may be modified only by written instrument approved and executed by both parties.

Section 6.05 Additional Reporting

Department shall furnish or cause to be furnished to the District and to any agent of the District, such reports or information concerning Department as the District may reasonably request. Such reports may include, at the District's discretion, response times for the various calls made by Department, calls and response times broken down by zone or neighborhood, or types of calls.

Section 6.06 Term

This Agreement shall be for a period of one year, beginning _____, 2010, and shall automatically renew for successive periods of one -year unless terminated as provided below.

Section 6.07 Termination

This Agreement may be terminated by either party upon 60 days written notice.

Section 6.08 Notices

All notices, certificates or other communications hereunder shall be sufficiently given or shall be deemed given when delivered by regular mail, hand delivery, or sent by facsimile addressed as follows:

If to the District, at: President
 Hill County Emergency Services District No. 2
 P.O. Box 457
 Hillsboro, Texas 76645

If to the Department, at: President
 _____ Volunteer Fire Department

Facsimile: _____

With a copy to: John J. Carlton
The Carlton Law Firm, P.L.L.C.
2705 Bee Cave Road, Suite 110
Austin, Texas 78746
Facsimile: (512) 900-2855

The District or the Department may by notice hereunder designate any further or different address to which subsequent notices, certificates or other communications shall be sent.

Section 6.09 Binding Effect

This Agreement shall inure to the benefit of and shall be binding upon the District and Department.

Section 6.10 Severability

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6.11 Execution and Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.12 Captions

The captions or headings in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of any provision or section of this Agreement.

Section 6.13 Obligation to County Fire Marshal

The Department may furnish reports or information concerning the Department as the Hill County Fire Marshal, or other appropriate County official, may reasonably request.

Section 6.14 Governing Law

The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Texas.

Section 6.15 Venue

This Agreement is fully performable and enforceable in Hill County, Texas, wherein venue hereunder shall lie.

IN WITNESS WHEREOF the District and the Department hereby execute this Agreement and affix their respective corporate seal.

Signed this _____ day of _____, 2010.

ATTEST:

By: _____
Printed Name: _____
Title: Board Secretary

**HILL COUNTY EMERGENCY
SERVICES DISTRICT NO. 2**

By: _____
Printed Name: _____
Title: Board President

ATTEST:

By: _____
Printed Name: _____
Title: _____

_____ **FIRE
DEPARTMENT**

By: _____
Printed Name: _____
Title: Board President

EXHIBIT "A"

SERVICE AREA MAP