

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF OKLAHOMA CITY AND
THE EMERGENCY MEDICAL SERVICES AUTHORITY**

This Professional Services Agreement is made and entered into this _____ day of _____ 2015, by and between The City of Oklahoma City (“City”) and the Emergency Medical Services Authority (“EMSA”).

The City and EMSA hereby enter into this Professional Services Agreement to effectuate the provisions of Ordinance No. 23,765, as amended, whereby Utility Customers in Oklahoma City may participate in the Medical Services Program and make payment through Oklahoma City, as the Utility Customer’s paying agent, to EMSA through monthly installment on their Oklahoma City utility bill and whereby Oklahoma City acts as billing agent for EMSA and receives, records, and remits such payments to EMSA on behalf of the Utility Customer and Oklahoma City, on behalf of and as escrow agent for EMSA, retains certain revenues as a rate stabilization fund. In addition, this agreement will solidify the City’s intent to ensure its citizens that capital, such as equipment and ambulances, will be owned by the City.

In accordance therewith, the City and EMSA hereby agree as follows:

I. Background

Ordinance No. 23,765 was approved by the City Council on December 16, 2008 and provides for a method by which City residences receiving City utilities may obtain from EMSA an EMSAcare (formerly TotalCare) membership payable as part of the Utility Customer’s City utility bill. The advantage to the Utility Customer of obtaining an EMSAcare membership in this manner is the ability to pay the membership fee in low monthly payments. The City will remit revenue from said payments to EMSA in the manner set forth in this Agreement and EMSA will provide Medical Services Program services to participating Utility Customers. The definitions contained in Ordinance No. 23,765, as amended, shall be applicable to this Agreement.

II. Scope of Services

A. Services to be provided by the City of Oklahoma City

The City of Oklahoma City agrees to provide the following services to EMSA:

1. For all City Utility Customers with utility accounts established as of September 30th of the 2015-2016 Program Year who have agreed to participate by not affirmatively opting out of the Medical Service Program pursuant to the provisions of Ordinance No. 23,765, as amended, and for City utility accounts established thereafter, who have agreed to participate by not affirmatively opted out of the Medical Service Program pursuant to Ordinance No. 23,765, as amended, the City shall include a monthly charge on said Utility Customer’s City utility bill for the Medical Service Program pursuant to the provisions of Ordinance No. 23,765, as amended.

2. The City shall provide an electronic file each month containing relevant information on payments received from Utility Customers in a “read only” format so that EMSA will know whether said Utility Customer’s Household is included in the Medical Service Program. The City shall not provide EMSA the ability to access any information that is considered confidential or privileged.
3. The City shall keep accurate records regarding Utility Customers who are participating in the Medical Service Program and shall correctly bill said Utility Customers.
4. EMSA has submitted its 2015-2016 budget to the City, showing that the costs of the Medical Services Program for the fiscal year will total \$4,920,918. The City will collect the Medical Services Program fee from the participating Utility Customers and will then remit funds to EMSA, retaining fees for the City’s administrative and banking costs, as outlined in paragraph II.A.5 herein. The City will also retain the Medical Service Program revenue received from Utility Customers that exceeds its administrative/banking costs and the costs of the Medical Services Program for a revenue stabilization fund. The revenue stabilization fund shall only be used for the provision of Medical Service Program services and related City administrative costs and services as provided in this Agreement. The revenue stabilization fund is intended to provide more level costs to Utility Customers over time. However, should the Medical Service Program revenues collected from City Utility Customers be inadequate to cover the City’s costs and EMSA’s Medical Services Program costs, the City will be under no additional obligation, pursuant to this Agreement, to remit its own funds to EMSA.
5. The City’s administrative services costs for the 2015-2016 fiscal year shall not exceed \$445,000 for billing, recording payments, open enrollment notification mailings, and customer service associated with Ordinance No. 23,765, as amended. In addition, EMSA will pay the City for banking charges incurred in the utility billing operation. EMSA will be charged proportionally based on the amount of monthly billings on City utility bills. The City will remit the banking charges fee to the City Treasurer’s Office based on invoices for actual services rendered and will maintain copies of all invoices and transactions; however, it is estimated that costs for FY 2015-2016 will be approximately \$75,000.
6. Pursuant to this Agreement, the City is not obligating any City funds to be paid to EMSA but is merely agreeing to receive, record and remit to EMSA those funds collected by the City pursuant to the Medical Service Program, after deducting the City’s administrative services costs and funds for rate stabilization.
7. The City shall receive and handle all citizen calls regarding monthly billings for the Medical Service Program, and calls regarding any special circumstances that would necessitate modifying the number of housekeeping units for any Landlord or Multifamily Residential Utility Customer.

B. Services to be provided by EMSA

1. For all City Utility Customers and their Households, who have agreed to participate by not affirmatively opting out of the Medical Service Program, EMSA shall provide EMSAcare benefits. EMSAcare (formerly TotalCare) benefits shall be considered those benefits provided by EMSA and described in Section 6-101 of Chapter 6 of the Oklahoma City Municipal Code, 2010. EMSA shall be obligated to provide EMSAcare benefits to those households identified by the City as participating in the Medical Service Program.
2. EMSA shall provide professional assistance with the City's publicity campaign designed to notify City residences of the Medical Service Program, including but not limited to, the ways to opt out of the program, the benefits provided by the program, the cost of the program, and obligations of landlords regarding notification to Tenants.
3. EMSA shall handle all citizen calls regarding all other issues arising under the Medical Service Program, other than those issues specifically identified in Section II(A)(7) of this Agreement.
4. EMSA shall use all revenue received pursuant to this Agreement for operating and capital expenses related to provision of emergency medical services to Oklahoma City. All capital purchased with said revenue, shall be titled in the City's name. "Capital" shall include all ambulances and on-board equipment. The City will lease said capital back to EMSA for use in the provision of services to the Western District. Said lease will be accomplished pursuant to the specific terms and conditions as outlined in **Exhibit 1** to this Agreement. Every year, in conjunction with submission of its annual budget to the City, EMSA shall also submit a list of all equipment to be purchased in the coming year that shall be owned by the City and/or titled in the City's name and a list of all equipment already owned, at that time, by the City. As said equipment is purchased throughout the fiscal year, copies of invoices and titles shall be forwarded to the City by EMSA. Any deviations in the list of anticipated capital versus capital actually purchased that fiscal year, shall be submitted in writing to the City by no later than July 31, 2016.

III. Term

This Agreement shall take effect when approved by both parties, and shall remain in effect until June 30, 2016.

IV. Other Provisions

A. **Assignment of Interest:** EMSA shall not assign any interest, obligation or benefit under or in this Agreement and shall not transfer any interest in the same without prior written consent of the City.

B. **Legal Relations:** EMSA shall comply with all City resolutions and ordinances, Oklahoma State statutes and federal laws and regulations applicable under this Agreement.

C. **Indemnification:** To the extent allowed by law, EMSA shall defend, indemnify, and hold harmless the City for any liabilities that may be imposed on, incurred by or asserted against the City and its officers, agents, and employees that result from EMSA's or its agents or contractor's acts or omissions in connection with the performance of this Agreement, the performance pursuant to the Medical Service Program or violation of any law. Provided however, EMSA shall not be liable under this Agreement for any loss or expense occasioned by the negligent acts or omissions of the City or its employees. Each party agrees to give the other party prompt notice of any such claims, lawsuits, actions, or proceedings. Further, the termination, cancellation, or expiration of this Agreement shall not affect the obligations and rights established which the parties hereby expressly agree shall survive payment of compensation, cancellation, termination and/or expiration of the Agreement. In the event the City reasonably determines there is a conflict of interest between the parties with respect to legal representation, EMSA shall reimburse the City and OCWUT for the cost of separate legal counsel to represent the interests of the City.

D. **Venue and Applicable Law:** The parties agree that any dispute which may arise between them arising out of or in connection with this Agreement shall be adjudicated before the District Court of Oklahoma County located in Oklahoma City, Oklahoma. The parties hereby submit to the exclusive personal jurisdiction of the courts of the State of Oklahoma, with respect to any action or legal proceeding commenced by either party. The parties agree to service of process in any such action or legal proceeding by means of registered or certified mail, return receipt requested, in care of the addresses set forth in paragraph IV (F) of this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

E. **Complete Agreement:** This Agreement expresses the entire understanding and complete agreement between the City and EMSA concerning the subject matter hereof. Neither the City nor EMSA has made nor shall be bound by any agreement, statement or any representation to the other concerning the subject matter hereof which is not set forth in this Agreement or in one of its Exhibits hereto.

F. **Notices:** All notices contemplated by this Agreement shall be given by addressing the appropriate material as follows:

For the City:

Craig Freeman
Finance Director
The City of Oklahoma City
100 North Walker Avenue, 4th Floor
Oklahoma City, OK 73102
Telephone: (405) 297-2248
Facsimile: (405) 297-2332

For EMSA:

Steve Williamson
President, EMSA
1417 N. Lansing Ave.
Tulsa, OK 74106
Telephone: (918) 596-3135

G. **No Waiver or Modification:** No waiver or modification of this Agreement or any covenant, condition, or limitation herein contained shall be valid unless agreed to by written amendment duly executed by the parties hereto. No evidence of waiver or modification shall be received in evidence of any proceedings or litigation between the parties hereto arising out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. The parties further agree that the provisions of this paragraph may not be waived except as set forth herein.

H. **Independent Contractor Status:** The parties hereby acknowledge and covenant that EMSA is an independent contractor and will act exclusively as an independent contractor and not as an employee of the City in performing the duties hereunder. The parties do not intend and will not hold out that there exists, any corporation, joint venture, partnership, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent contractor relationship. EMSA agrees not to make any claims to any welfare or retirement benefits available to qualified employees of the City, for work done in relation to this Agreement.

I. **Confidentiality:** EMSA acknowledges that in the course of providing services, EMSA may become privy to information of a confidential and proprietary nature relating to the City's activities. All information EMSA becomes privy to as a result of this Agreement should be treated confidentially and should not be divulged by EMSA to any third person or entity without the express written consent of the City.

J. **Validity:** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement which shall remain in full force and effect.

K. **Electronic Transmittals:** During the course of this Agreement, EMSA or The City may need to electronically transmit confidential information to each other and to other entities engaged by either party. E-mail is a fast and convenient way to communicate. However, e-mail is not a secure means of communication and, thus, confidentiality could be compromised. The parties agree to the use of e-mail and other electronic methods to transmit and receive information, including confidential information, between the parties and outside specialists or other entities engaged by either party.

L. **Exhibit 2:** EMSA shall execute **Exhibit 2, Non-Discrimination Statement**, attached.

M. **Counterparts:** This Agreement may be executed in several counterparts, each of which will be deemed to be an original and together will constitute one and the same agreement.

N. **Termination:** The City shall have the right to terminate this Agreement, with or without cause, at any time upon 30 days written notice to EMSA.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and do hereby warrant and represent that their respective signator whose signature appears below has been and is on the date of the Agreement duly authorized by all necessary and appropriate action to execute this Agreement.

APPROVED by the Emergency Medical Services Authority and signed by its President this _____ day of _____, 2015.

ATTEST: [Corporate Seal] **Emergency Medical Services Authority**

Secretary By: _____
President

APPROVED by the City of Oklahoma City and signed by the Mayor this _____ day of _____, 2015.

ATTEST: **THE CITY OF OKLAHOMA CITY**

City Clerk _____
Mayor

Reviewed for form and legality.

Assistant Municipal Counselor

EXHIBIT 1

LEASE AGREEMENT

This Lease agreement made and entered into as of the date hereinafter set forth, by and among The City of Oklahoma City, a municipal corporation (hereinafter also referred to as "City" and "Lessor"), and the Emergency Medical Services Authority, a public trust, (hereinafter also referred to as "EMSA" and "Lessee").

(1) LEASE OF EQUIPMENT

Subject to the terms and conditions hereof, Lessor agrees to Lease to Lessee and Lessee agrees to Lease from Lessor the equipment described in each invoice and/or title submitted by EMSA as well as all equipment still in Lessee's possession from prior Leases, with all replacement parts, repairs, additions and accessories incorporated therein or affixed thereto (herein collectively called the "Equipment").

(2) TERM

This Lease shall become effective upon execution by both parties. The Lease shall end on June 30, 2016, unless earlier terminated as expressly provided for in this Lease. The City may terminate this Lease for its convenience provided that notice of termination occurs during the "window of opportunity" provided for in the Amended and Restated Emergency Medical Services Authority Trust Indenture ("Indenture"). Termination of the Lease will also occur at the termination of the Trust. If the Lease is terminated by the City, EMSA shall return all Leased equipment in good condition to the City at no cost to the City.

(3) LESSEE CERTIFICATION

Lessee has the legal capacity to enter into this Lease and is not in contravention of any state, county, district, city or town statute, rule, regulation or other governmental provision and during the

Lease Term, the Equipment shall not be used in a trade or business of any other person or entity.

(4) LIMITATION ON WARRANTIES

Lessee acknowledges and agrees that the equipment is of a size, design and capacity selected by Lessee, that Lessor is not a manufacturer, vendor or distributor of such equipment, and that Lessor has not made, and does not hereby make, any representation, warranty or covenant, express or implied, with respect to the merchantability, condition, quality, durability, design, operation, fitness for use or suitability of the equipment in any respect whatsoever or in connection with or for the purposes and uses of Lessee, or any other representation, warranty or covenant of any kind or character, express or implied with respect thereto and Lessor shall not be obligated or liable for actual, incidental, consequential or other damages of or to Lessee or any other person or entity arising out of or in connection with the equipment, including but not limited to the use, performance or maintenance of equipment.

Lessor hereby assigns to Lessee during the Lease Term, to the extent permitted by law, all manufacturer's warranties, if any, that it may have, express or implied, with respect to the Equipment, and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's expense. Lessor authorizes Lessee, to the extent permitted by law, to enforce in its own name any warranty, representation or other claim enforceable against the manufacturer. Lessor assumes no responsibility for shipment, delivery, installation or maintenance, and all claims of Lessee with respect thereto, whether for delay, damage or otherwise, shall be made against the manufacturer.

(5) USE AND REPAIRS

Lessee shall use the Equipment in a careful and reasonable manner for the use contemplated by the manufacturer of the Equipment and shall comply with all laws, ordinances, insurance

policies and regulations relating to, and shall pay all costs, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee, at its sole cost and expense, shall maintain the Equipment according to the manufacturer's recommended guidelines or the equivalent and meet any and all recertification requirements and shall furnish proof of such maintenance, if requested by Lessor, and shall furnish all needed servicing and parts, which parts shall become part of the Equipment. If the Equipment is such as is customarily covered by a maintenance agreement, Lessee shall furnish Lessor with a maintenance agreement with a party satisfactory to Lessor.

(6) ALTERATIONS

Lessee shall not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent, and any permitted alteration or attachment that cannot be readily removed without damaging the Equipment's originally intended function or value shall become part of the Equipment.

(7) LOCATION AND INSPECTION

The Equipment shall not be removed from, or if the Equipment consists of rolling stock, its permanent base shall not be changed from EMSA's Western Division without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

(8) LESSEE'S OBLIGATION

In consideration for the use of the vehicles and equipment covered by this Lease, Lessee agrees to provide emergency medical services in the City of Oklahoma City as required by the Trust Indenture.

(9) RISK OF LOSS, DAMAGE AND DESTRUCTION

Lessee assumes all risk of loss of or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment shall relieve Lessee of the obligation to perform its obligation to provide emergency medical services in the City of Oklahoma City under this Lease. In the event of damage to any item of Equipment, Lessee shall immediately place the same in good repair (the proceeds of any insurance recovery shall be applied to the cost of such repair). If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee, at the option of Lessor, shall replace the same with like equipment in good repair. If equipment covered under this Lease is determined to be surplus to the needs of the Lessee, the Lessee shall dispose of property pursuant to City ordinances and will provide the proceeds from such disposal to Lessor or, alternatively, may return surplus property to the Lessor for disposition. Should lost or damaged property not be replaced and an insurance settlement is received, the proceeds from such settlement shall be provided to the Lessor, unless otherwise directed by the Lessor.

(10) INSURANCE

EMSA's operations contractor must carry insurance pursuant to the provisions of section 6-8 of the Oklahoma Municipal Code, 2010, as amended, insuring the City and EMSA. EMSA shall furnish the City Manager of the City a certificate, on a form provided by the City of such insurance which shall provide that The City is an additional insured under said policy or policies, and that said policy or policies cannot be canceled or materially modified except upon thirty (30) days advance written notice received by the City. Provided, however, any modification or termination shall not excuse or reLease any entity from its obligations hereunder. Failure to maintain insurance shall be considered a material breach of the contract.

(11) INDEMNIFICATION

EMSA hereby agrees to release, to defend, to indemnify and to save harmless the City and its officers, trustees, agents and employees from and against any and all loss of or damage to property or injuries to, or death of, any person or persons, and EMSA agrees to defend, indemnify and save harmless the City, its officers, trustees, agents and employees, from and against all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind or nature whatsoever, including without limitation, worker's compensation claims, of or by anyone whomever, in any way resulting from, or arising out of directly or indirectly, EMSA's operations under or in connection with this Lease or EMSA's use of the Leased property and including, without limitation, acts and omissions of EMSA's officers, employees, representatives, suppliers, invitees, members, transportees, guests, contractors or agents. The minimum insurance requirements prescribed above shall not be deemed to limit or define EMSA's obligations herein.

(12) ASSIGNMENT

Without Lessor's prior written consent, Lessee shall not: (a) assign, transfer, pledge, hypothecate or grant any security interest in, or otherwise dispose of, this Lease or the Equipment or any interest in this Lease or the Equipment or (b) sublet or lend the Equipment or permit the Equipment to be used by anyone other than Lessee or Lessee's employees, or Lessee's operations contractor.

(13) AMENDMENTS

All amendments or modifications of the terms of this Lease (except for the addition of serial numbers for the Equipment as set forth in the Acceptance Certificate) must be accomplished by written consent of Lessee and Lessor.

(14) NOTICES

All notices to be given under this Lease shall be made in writing and mailed by certified mail to the other party at the following addresses:

City of Oklahoma City
Craig Freeman
Finance Director
100 N. Walker, Suite 400
Oklahoma City, OK 73102
(405) 297-2506

EMSA
Stephen Williamson
President
1417 N. Lansing Ave.
Tulsa, OK 74106-5906
(918) 596-3153

Any such notice shall be deemed to have been received five (5) days subsequent to mailing.

(15) SECTION HEADINGS

All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

(16) GOVERNING LAW

This Lease shall be governed by the provisions hereof and by the laws of the State of Oklahoma. Any disagreements about the Lease shall be settled in a court of competent jurisdiction in Oklahoma County, Oklahoma

(18) SEVERABILITY

Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease.

(19) WAIVER

The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach hereof.

IN WITNESS WHEREOF, this Lease Agreement was approved by The City of Oklahoma City this _____ day of _____, 2015.

REVIEWED for form and legality.

Assistant Municipal Counselor

Exhibit 2
Non-Discrimination Statement

EMSA agrees, in connection with the performance of work under this contract, that it will not discriminate against any employee or applicant for employment, because of race, creed, color, sex, age, national origin, ancestry or disability. EMSA shall take affirmative action to insure that employees are treated without regard to their race, creed, color, age, national origin, sex, ancestry or disability. Such actions shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. EMSA agrees to post, in a conspicuous place available to employees and applicants for employment, notices, to be provided by the City Clerk of the City, setting forth the provisions of this section. EMSA agrees to include this non-discrimination clause, in any subcontracts connected with the performance of this contract. In the event of EMSA's non-compliance with the above non-discrimination clause, this contract may be canceled or terminated by the City. EMSA may be declared ineligible for further contracts with the City until satisfactory proof of intent to comply is made by EMSA.

(Signature line for EMSA)