


## MEMORANDUM

**DATE:** March 19, 2021  
**TO:** Mayor White & City Council  
**FROM:** Mercy Rushing, City Manager   
**SUBJECT:** Discuss and Consider action on an Amendment to Contract for Paramedic Ambulance Service with UT Health East Texas EMS

### **Council Meeting Agenda Item for Monday, March 22, 2021**

#### **Background Information:**

This is an amendment to our original contract agreement of October 27, 2000 and amended agreement of Feb 18, 2016 for Paramedic Ambulance between the City of Mineola and ETMC EMS dba UT Health East Texas EMS (UT EMS) to continue effective through October 27, 2026.

This Agreement as before will be for a period of 5 years and will automatically renew for additional 5 year terms unless one party gives the other party at least 180 days' notice of termination prior to expiration of the current term.

The new added amendment verbiage to this year contract is the language on Section 7 - 7.03 of the Agreement states:

Should the City wish to discontinue offering EMS memberships to the citizens residing in the City, during the period of the Agreement, a contract modification to discontinue said membership coverage supported by the City, will be submitted and executed as agreed to by both the City and UT Health EMS.

I did send to Scott Berkley of UT Health the attach questions on January 27, 2021 to get some answers about our citizen membership program that the City pays for annually at cost of \$37,500.00 based on 4,500 population inside the city limits. I also have attached for you the answers to my questions that sent on January 27, 2021.

This will be something we will discuss at our annual budget in June 2021 to make sure we are using our dollars wisely and effectively. UT Health has given us some suggestions to look at our budget workshop for 2021-2022 fiscal year.

#### **Recommendation:**

It is my recommendation as the City Manager and David Madsen as the City Emergency Manager/Fire Marshal to continue service agreements with the new amendment as presented with ETMC EMS dba UT Health East Texas EMS (UT EMS) for Paramedic Ambulance Services for the City of Mineola.

**AMENDMENT TO CONTRACT FOR  
PARAMEDIC AMBULANCE SERVICES**

The City of Mineola, Texas (“City”) and ETMC EMS d/b/a UT Health East Texas EMS (UT EMS) are parties to a Contract for Paramedic Ambulance Services effective October 27, 2000, as amended (collectively, the “Agreement”). Unless otherwise noted, all capitalized terms used in this Amendment have the meaning assigned to them in the Agreement.

The Parties wish to amend the Agreement as more specifically set forth in this Amendment.

In consideration of the premises and agreements contained in this Amendment and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and confessed, the Parties agree as follows:

- a. Section 7 of the Agreement is deleted and the following is substituted in its place:

“7.01 The term of this Agreement will continue until **October 27, 2026**.

7.02 Upon completion of a term, the Agreement will automatically renew for additional 5 year terms, unless one party gives the other at least 180 days’ notice of termination prior to expiration of the current term.

7.03 Should the City wish to discontinue offering EMS memberships to the citizens residing in the City, during the period of the Agreement, a contract modification to discontinue said membership coverage supported by the City, will be submitted and executed as agreed to by both the City and UT Health EMS.”

EXEPT AS EXPRESSLY SET FORTH IN THIS AMENDMENT, THE AGREEMENT IS RATIFIED AND REAFFIRMED IN ALL RESPECT BY THE PARTIES.

This amendment will be effective on \_\_\_\_\_, 2021.

Dated: \_\_\_\_\_, 2021.

**ETMC EMS**

**d/b/a UT HEALTH EAST TEXAS EMS**

By: \_\_\_\_\_

**John Smith, CEO UT Health EMS**

By: \_\_\_\_\_

**Donald Baker, CFO UT Health East Texas**

**CITY OF MINEOLA, TEXAS**

By: \_\_\_\_\_

**KEVIN WHITE, Mayor**



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## City of Mineola

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January 27, 2021

RE: Questions Concerning UT Ambulance Service for Citizens of Mineola

Dear Sir,

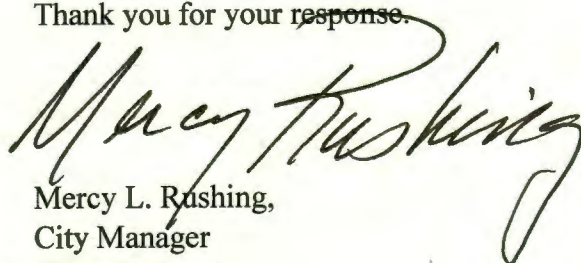
The City of Mineola annually budgets for the cost of ambulance service provided by UT Health for all the citizens of Mineola. As we analyze each line item of the budget, we want to ensure that the funds are well spent. We are quite satisfied with the services provided and want to understand how much activity is being experienced in Mineola.

Please provide the following information:

For calendar year 2020:

- A. How many citizens of Mineola received the annual renewal notice provided by UT Health?
- B. How many notices were returned with the box checked and no fee paid by the individual?
- C. How many notices were returned from the citizens of Mineola that did not check the box and did include your annual fee?
- D. How many of the citizens utilizing the services of UT Health were covered by Medicare and not affected by city coverage?
- E. How many citizens utilized the services provided by UT Health under the City of Mineola contract?

Thank you for your response.



Mercy L. Rushing,  
City Manager  
City of Mineola

February 11, 2021

RE: Response to the City of Mineola concerning EMS memberships

Dear Mrs. Rushing,

UT Health EMS reviewed our records in coordination with EMS MC, the UT Health EMS membership billing entity, to address the questions put forth by the City of Mineola. We hope this will assist the City of Mineola in the review of the utilization of UT Health EMS services.

For calendar year 2020:

A. How many citizens of Mineola received the annual renewal notice provided by UT Health?

During the 60-day annual membership drive (Sept. 1 - Oct. 31, 2020), 1,584 households, within the 75773 zip code, were sent either an EMS membership application or renewal letter.

B. How many notices were returned with the box checked and no fee paid by the individual?

Of the 998 active members inside the city limits of Mineola, 781 of the applications for the EMS membership checked the box: **No Payment Enclosed. I currently reside within the City of Mineola where membership is automatic, but I am sending my information for EMS to have on file.**

C. How many notices were returned from the citizens of Mineola that did not check the box and did include your annual fee?

217 EMS membership applications and renewal notices were returned without the box checked, where the beneficiary resided within the city limits of Mineola. These memberships included either the new application (\$60) or renewal (\$50) fee.

D. How many of the citizens utilizing the services of UT Health were covered by Medicare and not affected by the city coverage?

With the data available to UT Health EMS, we were able to determine that 371 or 46% of the 810 active members, who were transported from inside the city limits of Mineola, were covered by at least one form of Medicare coverage.



E. How many citizens utilized the services provided by UT Health under the City of Mineola contract?

For the calendar year 2020, UT Health EMS responded to 1,739 calls resulting in 1,262 transports within the city limits of Mineola.

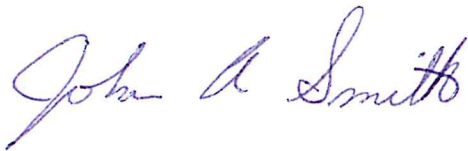
810, or 64%, of all transports from the City of Mineola had EMS memberships. The UT EMS memberships provided a savings of over \$100,000 to the citizens of Mineola in 2020.

Breakdown:

1,739 calls in the City of Mineola  
1,262 transports in the City of Mineola  
998 active EMS Memberships in the City of Mineola  
781 memberships paid for by the City of Mineola  
217 memberships were paid by the household  
810 transports from within the city limits had EMS memberships  
371 of the transports within the city had an EMS membership AND Medicare coverage  
100 of the transports within the city had an EMS membership WITHOUT Medicare coverage

We hope these adequately address the questions listed, if you have any additional questions or require more information, please do not hesitate to contact us.

Thank you for the privilege to serve the City of Mineola with the services of UT Health EMS / AIR 1.



John A Smith  
CEO, UT Health EMS / AIR 1

**From:** David S. Berkley <dsberkley@uthet.com>  
**Sent:** Monday, February 22, 2021 1:48 PM  
**To:** Mercy Rushing <mrushing@mineola.com>  
**Subject:** Water Billing for EMS membership

Good day Mrs. Rushing-

I hope you and the City of Mineola came through all of the crazy weather with the least amount of complications and worries.

I have here the names of some of the cities that use the water bill to offer memberships to their citizens. Should they sign up, the resident receives a five dollars charge on their monthly water bill statement to cover their EMS membership.

It is an automatic renewal and the resident may opt out at any time.

Here are a couple of cities and contacts who use the program this way.

Hideaway Lake - Susie 903-882-6151

Murchison - Karen 903-469-3710

Tyler - 903-531-1230 press 0

Other cities that do this (but we could not get through to a contact person) are:

Arp

Athens

Craft Turney

RPM( Murchison/Brownsboro water company)

Rusk

Rusk Rural Water

Troup

I hope this will help. Please let me know if you need any additional information at this time.

Thank you!

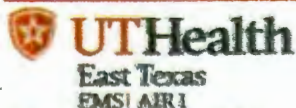
Scott

Scott Berkley

*Business / Government Relations*

UT Health East Texas EMS|AIR 1

903.312.5795 mobile



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## Mercy Rushing

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**From:** David S. Berkley <dsberkley@uthet.com>  
**Sent:** Wednesday, February 24, 2021 11:12 AM  
**To:** Mercy Rushing  
**Subject:** Re: Water Billing for EMS membership

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good morning Mercy,

Mineola is unique in that it is the only city which pays for all of their citizens, to have an EMS membership, if they live within the city limits.

We have some cities that pay for the city employees as an employment benefit and offer the membership that way; but not to the citizens as a whole.

Please let me know if I can help with anything else.

Scott

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**From:** Mercy Rushing <mrushing@mineola.com>  
**Date:** Tuesday, February 23, 2021 at 3:47 PM  
**To:** Scott Berkley <dsberkley@uthet.com>  
**Subject:** FW: Water Billing for EMS membership

Hi David,

One more question, can you tell what cities actually do what we do which is pay for all citizens based our population to have free ambulance service if they live inside the city limits?

**"STAY SAFE & MINEOLA STRONG"**

Sincerely,

Mercy L. Rushing, PCED, CTE

City Manager, City of Mineola

Executive Director Mineola Economic Dev. Corp.

[mrushing@mineola.com](mailto:mrushing@mineola.com)

903-569-6183

[www.mineola.com](http://www.mineola.com)



**ATTENTION Public Officials (APPOINTED, ELECTED and EMPLOYEES)**



**AMENDMENT TO CONTRACT FOR  
PARAMEDIC AMBULANCE SERVICES**

The City of Mineola, Texas ("City") and East Texas Medical Center, d/b/a East Texas Medical Center Emergency Medical Service ("ETMC-EMS") are parties to a Contract for Paramedic Ambulance Services effective October 27, 2000, as amended (collectively, the "Agreement"). Unless otherwise noted, all capitalized terms used in this Amendment have the meaning assigned to them in the Agreement.

The Parties wish to amend the Agreement as more specifically set forth in this Amendment.

In consideration of the premises and agreements contained in this Amendment and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and confessed, the Parties agree as follows:

- a. Section 7 of the Agreement is deleted and the following is substituted in its place:

"7.01 The term of this Agreement will continue until October 27, 2021.

7.02 Upon completion of a term, the Agreement will automatically renew for additional 5 year terms, unless one party gives the other at least 180 days' notice of termination prior to expiration of the current term."

EXCEPT AS EXPRESSLY SET FORTH IN THIS AMENDMENT, THE AGREEMENT IS RATIFIED AND REAFFIRMED IN ALL RESPECTS BY THE PARTIES.

This amendment will be effective on Feb. 18, 2016.

Dated: Feb. 18, 2016.

**EAST TEXAS MEDICAL CENTER EMERGENCY  
MEDICAL SERVICE**

By: 

RONALD J. SCHWARTZ, Vice-President  
and COO

**CITY OF MINEOLA, TEXAS**

By: 

RODNEY T. WATKINS, Mayor







*The CITY of Mineola City Council shall annually permit adjustment of the Schedule of Charges (as discussed in 4.01), the first such adjustment being authorized on November 1, 2007. Any increase made to the Schedule of Charges in such adjustment shall not exceed the percentage change in the Consumer Price Index, Dallas, Texas, basis over the most recent 12-month period for which published figures are available.*

3. **SECTION 4.03 ADJUSTMENT FOR EXCESS BILLINGS.** Delete entirely.

4. **ARTICLE 7, TERM AND RENEWAL,** should be deleted and in lieu thereof, the following text substituted, so that hereafter such Section shall read as follows:

7.01 **TERM OF AGREEMENT.** This contract shall be for a period of five (5) years beginning October 27, 2006 ("Initial Term")

7.02 **RENEWAL TERMS. CONTRACT** will automatically be renewed for an additional five (5) year extension. Either party shall have the right to terminate this contract at the end of the Initial Term by providing the other party with a one-hundred eighty (180) days written notice prior to such date.

**Special Event Coverage:**

ETMC EMS will provide no cost dedicated ambulance coverage to all home varsity high school football games and to other special events as requested by the City of Mineola

**First Responder Support:**

The level of support currently enjoyed by the first responders affiliated with the City of Mineola shall remain unchanged by this Contract Modification.

**EMS Membership Program**

Section 2.07 of the existing contract outlines the EMS Membership Program for citizens residing in the City of Mineola. On October 26, 2001 the City began paying Thirty Thousand Dollars and No/100 (\$30,000.00) for EMS Membership for the residents of the City of Mineola. This sum will remain unchanged unless the costs of EMS Memberships change system-wide. In the event of a system-wide adjustment, the fee paid by the City of Mineola, will be adjusted proportionally.

**B. Miscellaneous:**

1. **Headings.** Section headings are for reference only and shall not affect the interpretation or meaning of any provision of this Modification of Contractual Agreement for Ambulance Service ("Modification").



2. Effect of This Modification. The modifications contained in this Modification shall be limited strictly as written and shall not be deemed to constitute a modification of, or any consent to noncompliance with, any term or provision of the Contract except as expressly set forth herein. Except for the modifications expressly set forth herein, all terms and provisions of the Contract shall remain unchanged and in full force and effect and are hereby ratified and confirmed.

3. Governing Law. THIS MODIFICATION SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

4. Counterparts. This Modification may be executed by the different parties hereto on separate counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute but one and the same Modification.

5. NO ORAL AGREEMENTS. THE CONTRACT, AS MODIFIED BY THIS MODIFICATION, TOGETHER WITH THE RELATED DOCUMENTS, REPRESENTS THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

C. This Modification became effective on October 23, 2006.

DATED: October 23, 2006.

ETMC-EMS:

EAST TEXAS MEDICAL CENTER d/b/a  
East Texas Medical Center Emergency  
Medical Service

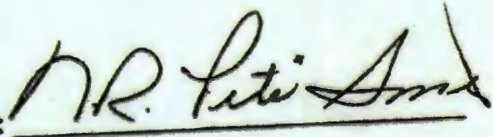
CITY:

MINEOLA, TEXAS

By:

  
Anthony J. Myers, Vice President/COO

By:

  
Mayor



**CONTRACT  
FOR  
PARAMEDIC AMBULANCE SERVICES**

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**By and Between**

**CITY OF MINEOLA, TEXAS**

**and**

**EAST TEXAS MEDICAL CENTER d/b/a  
EAST TEXAS MEDICAL CENTER EMERGENCY MEDICAL SERVICE**

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**CONTRACT  
FOR  
PARAMEDIC AMBULANCE SERVICES**

This Contract for Paramedic Ambulance Services entered into this 27th day of October, 2000, by and between the City of Mineola (hereinafter referred to as "City") and East Texas Medical Center d/b/a East Texas Medical Center Emergency Medical Service, a Texas not-for-profit corporation (hereinafter referred to as "ETMC-EMS"). City and ETMC-EMS are sometimes collectively referred to herein as the "Parties."

NOW, THEREFORE, for and in consideration of the premises and agreements herein contained and other good and valuable consideration, including the award of exclusive market rights, the receipt and adequacy of which are hereby forever acknowledged and confessed, the Parties agree as follows:

**ARTICLE I. DEFINITIONS**

The following definitions shall apply to terms as used throughout this Agreement.

**Administrator** means the City Council of the City of Mineola, Texas.

**Agreement** means this Contract.

**Ambulance Patient** means any person being transported to or from a health care facility in a reclining position from any point within the "Regulated Service Area."

**Ambulance Service Contract** means an agreement between ETMC-EMS and any local governing unit incorporating clinical standards and financial provisions consistent with those set forth in this Agreement.

**Ambulance Service Contractor** means East Texas Medical Center Emergency Medical Service (ETMC-EMS).

**ANI/ALI** means Automatic Number Identifier/Automatic Location Identifier and is one of the enhancement features of 911 system that aids in identification of incoming calls.

**CAD** means Computer Assisted Dispatch including but not limited to primary dispatch data entry and automated time-stamping, 911 data interface, demand pattern analysis, system status management, automated patient locator aids, response time reporting and documentation, and (when installed) automated vehicle tracking.

**City of Mineola** means the City Council of the City of Mineola, Texas.

**City Council** means that group of officials elected to govern the affairs of the City.

**Contract Service Area** means the city limits of the City of Mineola, Texas.

**CPR and 1st Response Support Program Fund** means that certain bank account established by ETMC-EMS pursuant to this Contract, into which account late-run penalty payments are deposited on a monthly basis as provided for herein. Expenditures of such funds shall be limited to funding direct, out-of pocket costs of citizen Cardiopulmonary Resuscitation and related training and 1st Response support program costs. *None of these funds shall be used to fund wages or salaries of personnel employed by ETMC-EMS, or to fund ETMC-EMS' administrative or overhead costs.*

**EMS Board** means the City Council of the City of Mineola, Texas.

**EMS System** means that network of individuals, organizations, facilities and equipment, including but not limited to ETMC-EMS, whose participation is required to generate a clinically-appropriate, pre-planned system-wide response to each request for pre-hospital care and/or interfacility transport, so as to provide each patient the best possible chance of survival without disability and given available financial resources.

**Extraordinary Adjustment** means a change of the "Uniform Schedule" which is not a scheduled cost-of-living adjustment, but is instead an adjustment justified on the basis of either: (1) an increase in the *System Standard of Care* whose cost of implementation and on-going compliance exceeds the then-remaining balance of the "Upgrade Reserve" or (2) an unusual increase in the cost of a factor of production when such increase in cost is industry wide and the result of causes beyond ETMC-EMS' reasonable control.

**1st Response, 1st Responder, 1st Response Organization** refers to that service and those units (e.g., fire department 1st responders) which provide initial stabilization and trained assistance on-scene and, when required, en route to medical facilities, as well as certain extrication and rescue services. In accordance with Priority Dispatch Protocols, a 1st Response unit is routinely sent to all presumptively-classified life-threatening calls within the ETMC-EMS service area.

**Contract** (aka Contract for Ambulance Services; aka the "Agreement"; aka the "Contract") is this Contract document labeled Contract For Paramedic Ambulance Services and is an agreement between the City and East Texas Medical Center Emergency Medical Service.

**Medical Control Board** means that board of physicians established and empowered by the Uniform EMS Ordinance to update from time-to-time the *System Standard of Care*, and to monitor compliance with that *System Standard of Care*.

**Medical Director** means that Medical Director which shall be an emergency physician, expert in the pre-hospital practice of Emergency Medicine, appointed by ETMC-EMS.

**Member Jurisdiction** means the City.

**MICU** means Mobile Intensive Care Unit as defined in the Texas Health and Safety Code.

**Mutual Aid** means the paramedic ambulance service provided within the Contract Service Area by neighboring providers other than ETMC-EMS at the request of ETMC-EMS, pursuant to an agreement governing the exchange of service assistance when requested. Such a unit shall be



judged by ETMC-EMS to have acceptably trained personnel and equipment, and approved by the Medical Control Board.

**Ordinance** is the same as the Uniform EMS Ordinance.

**PSAP** means Public Service Answering Point and is an auxiliary service in the 911 system.

**Regulated Service Area** means the corporate limits of City.

**System Standard of Care** means the combined compilation of all priority-dispatching protocols, pre-arrival instruction protocols (i.e., 1st responders and ambulances), protocols for selecting destination hospital, standards for certification of pre-hospital care personnel (i.e., telephone call-takers, 1st responders, ambulance personnel, and on-line medical control physicians), as well as standards governing requirements for on-board medical equipment and supplies, and licensure of ambulance services and 1st responder agencies. *The System Standard of Care* shall simultaneously serve as both a regulatory and contractual standard.

## ARTICLE II. MUTUAL RESPONSIBILITIES AND UNDERSTANDINGS

### 2.01 FRANCHISE MODEL SYSTEM

- a. ETMC-EMS shall provide services under this Contract through a franchise model system and shall furnish its own facilities, vehicles, on-board equipment, radio systems, and computer-aided dispatch hardware and software. ETMC-EMS shall serve as the retail provider of 911 ambulance services, routine transport services and related ambulance services, financed primarily or exclusively on a fee-for-service basis.
- b. ETMC-EMS may charge user fees for services rendered under this contract which are consistent with the provisions of the contract.
- c. ETMC-EMS shall look for compensation for its services under this Contract solely through the following sources:
  - (i) Third party payors;
  - (ii) Persons or entities who use ambulance services or other persons responsible for such ambulance services; and
  - (iii) Contract purchasers of ambulance services.

**2.02 ALL MICU, FULL-SERVICE SYSTEM.** All ambulances rendering services pursuant to this Contract shall be staffed and equipped to render paramedic-level care.

**2.03 "FIXED-PRICE TERM AGREEMENT FOR REQUIREMENTS."** This Contract is a "fixed-price term agreement for requirements," with provisions for inflation adjustment and adjustment for externally-imposed upgrades to the *System Standard of Care*. At such time that ETMC-EMS assumes full responsibility for dispatch, the EMS Board guarantees that every medical request including but not limited to 911 cases originating within the Member Jurisdictions, except 911 calls originating from an area within the City which has contracted for 911 ambulance services with a provider other than ETMC-EMS, shall be transferred to ETMC-EMS (along with ANI/ALI data as available) for telephone interrogation, pre-arrival instructions (if appropriate), and the dispatch and delivery of ambulance service.

**2.04 BUSINESS VOLUMES NOT GUARANTEED.** The EMS Board specifically declines to present any representations, estimates or predictions regarding the frequency of 911 medical requests which may originate within the Member Jurisdictions during the term of this Contract, or the percentage of such requests which may result in patient transport, or the volume of non-911 ambulance requests which ETMC-EMS may receive.

**2.05 NATURE OF COMMITMENT.** The nature of commitment by ETMC-EMS shall be *performance* - not "level of effort." ETMC-EMS is specifically being retained for its demonstrated expertise in effectively managing the efficient delivery of paramedic ambulance services. Furthermore, ETMC-EMS represents that it is capable of delivering the promised levels of service without seeking compensation beyond that allowed under the then-current Uniform Schedule. Based on ETMC-EMS's track record, and on its representations and promises as set forth in this Agreement, as submitted by ETMC-EMS,

the governing body of the City has approved that execution of this Contract and it shall focus on performance results - not production methods. *In this regard, except for periodic documentation of accounts receivable generated to demonstrate compliance with rate authorizations, ETMC-EMS is specifically instructed not to submit level-of-effort cost projections, budget estimates, or profit/loss statements before or after Contract commencement.* In turn, so long as the clinical, response time, user-fee charges, and other performance requirements of this Contract are met, ETMC-EMS shall enjoy freedom from interference in the performance of its work, the management of its business, and in the selection of production methods and strategies to efficiently achieve Contract requirements.

**2.06 EQUIPMENT AND FACILITIES.** All equipment, facilities, and medical supplies acquired or supplied for the performance of the work which is the subject of this Contract shall be furnished by ETMC-EMS at ETMC-EMS's own expense.

**2.07 SUBSCRIPTION MEMBERSHIP PROGRAM.**

- a. **Membership Fees.** ETMC-EMS will provide EMS memberships to all citizens residing in the City of Mineola until December 31, 2000, through the Wood County subsidy agreement. For the period January 1, 2001, through October 26, 2001 (approximately the last ten months of the contract year), the prorated membership fee due from City to ETMC-EMS will be Twenty Two Thousand Five Hundred and No/100 (\$22,500.00) Dollars. Effective October 26, 2001, the membership fee due from the City to ETMC-EMS will be Thirty Thosuang and No/100 (\$30,000.00) Dollars annually. If City chooses to discontinue the annual membership payment, individual memberships will be allowed, as set forth in Subsections b. through h., below.
- b. **Basic Objects of Program.** ETMC-EMS shall offer for sale to residents of all member jurisdictions and participating jurisdictions under this Contract, a subscription ambulance membership plan which fee for the first year of coverage under the plan will not exceed \$48 dollars per household. The fee for the subscription ambulance membership plan is subject to an annual inflation adjustment equal to 90% of the percentage increase in the CPI over the most recent 12-month period for which published figures are then available as approved by the Board of Directors of ETMC-EMS. Additionally ETMC-EMS may offer discounts for renewal of subscription ambulance membership plans.
- c. **Legal Obligations.** The subscription ambulance membership plan offered to residents of the member jurisdictions and participating jurisdictions under this Contract shall comply with federal and state law relating to subscription ambulance membership programs.
- d. **Medicaid Recipients.** Persons whose medical expenses are covered under Medicaid are not eligible to participate under the subscription ambulance membership plan.



- e. **Additional Benefits.** ETMC-EMS may, at its option, offer to persons who purchase subscription ambulance membership plans under this subsection, additional benefits.
- f. **Periodic Membership Drives.** ETMC-EMS shall hold an open enrollment period during each calendar year for the subscription ambulance membership program and residents in the member jurisdictions and participating jurisdictions shall be entitled to apply for participation in the subscription ambulance membership program during that period.
- g. **Beneficial Extension of Service.** Each person requiring or requesting ambulance service shall receive the quality of care and transportation required under the System Standard of Care, without regard to membership status in the subscription ambulance membership program.
- h. **Financial Assistance for Plan Purchase.** A member jurisdiction may purchase or may assist its residents in purchasing and paying for subscription ambulance membership plans in accordance with a written agreement between the member jurisdiction or purchasing jurisdiction and ETMC-EMS.

**2.08 PROFESSIONAL CONDUCT/COURTEOUS SERVICE.** City and/or EMS Board expects and requires professional and courteous conduct at all times from ETMC-EMS's ambulance personnel, control center personnel, patient accounts managers, middle managers and top executives. ETMC-EMS shall address and correct an occasional departure from this standard of conduct.

**2.09 FINANCIAL INCENTIVE PROVISIONS.** The following incentives for achieving response time reliability above the minimum requirements set forth in Section 3.02 shall apply:

- a. **CPR and 1st Response Support Program Fund.** ETMC-EMS shall establish a CPR and 1st Response Support Program Fund. ETMC-EMS shall develop and periodically update a CPR and 1st Response Support Program plan, a current copy of which shall be submitted to the Administrator as a matter of public record. Furthermore, ETMC-EMS shall submit to the Administrator on a quarterly basis a detailed accounting of deposits to and expenditures from the CPR and 1st Response Support Program Fund. In this regard, the Administrator shall have reasonable access to ETMC-EMS's records as necessary to verify that deposits to the CPR and 1st Response Support Program Fund are kept current at all times, and that expenditures from the CPR and 1st Response Support Program Fund are in accordance with requirements of this Section 2.09a.
- b. **Late Run Penalties.** For each whole minute an ambulance response time extends beyond the applicable time-frame specified in Section 3.02 hereof, ETMC-EMS shall pay into the CPR and 1st Response Support Program Fund late-run penalty fees in the amounts shown below, not to exceed \$150 per incident.

Presumptively-Classified Life-Threatening Calls....	\$10/min.
Presumptively-Classified Non-Life Threatening Calls.....	\$ 5/min.
Presumptively-Classified Routine Transports.....	\$ 2/min.
Scheduled Routine Transports.....	\$ 2/min.

c. **Exemptions.** No requests for ambulance service shall be exempt from response time compliance and calculations or from late-run penalties. Calculations will be based on percentiles for every one hundred requests in each category for service except as follows:

- i. Requests not resulting in a patient transport;
- ii. Requests during a period of unusually-severe weather conditions, such that response time compliance is either impossible or could be achieved only at a greater risk to the public than would result from delayed response;
- iii. Late runs resulting as a consequence of inaccurate or incomplete information obtained by 911 control center personnel during telephone interrogation of a caller, or error in conveying such information to the ETMC-EMS control center, either orally or by way of data transmission, provided, *however, that this exemption shall not be applicable to any late run in which the caller was directly interrogated by ETMC-EMS's control center personnel;*
- iv. Requests during a declared disaster, locally or in a neighboring non-participating jurisdiction, in which ETMC-EMS is rendering assistance. During such periods, ETMC-EMS shall use best-efforts to simultaneously maintain coverage within Member Jurisdiction as well as provide disaster assistance;
- v. In cases where multiple paramedic-capable units are dispatched to a single incident, the first-arriving paramedic unit shall "stop the clock," and response times of later-arriving units shall be excluded from response time statistics and late run penalties;
- vi. During periods of unusual system overload, which shall mean that at least two (2) emergency responses are occurring simultaneously within the service area, responses *in excess of* the first emergency request shall not be included in response time calculations or be subject to late run deductions.
- vii. No other causes of late response (e.g., equipment failure, vehicular accident regardless of origin, or other causes within ETMC-EMS's reasonable control) shall serve to justify exemption from response time requirements; and
- viii. Representatives of the Medical Control Board shall periodically verify (by sampling technique) the accuracy of ETMC-EMS's response time reporting. ETMC-EMS's requests for application of exemptions to response time requirements and late run penalties shall be subject to review and approval

by the Medical Control Board or a designated standing committee appointed for that purpose.

- 2.10 USE OWN EXPERTISE AND JUDGMENT.** ETMC-EMS is specifically advised to use its own best judgment in deciding upon the methods to be employed to achieve and maintain the levels of performance required hereunder. Such "methods" include compensation programs, shift schedules, personnel policies, supervisory structures, vehicle deployment techniques, and other internal matters which, taken together, comprise ETMC-EMS's own strategies and tactics for performing its obligations under this Agreement.
- 2.11 EXCLUSIVITY.** ETMC-EMS is awarded exclusive rights and responsibilities for provision of all emergency and non-emergency ambulance services, including special events coverage, originating within the Member Jurisdictions, regardless of the manner in which the request for service is conveyed.
- 2.12 SELECTION OF PATIENT DESTINATION.** Medical Protocols approved by the Medical Control Board shall establish protocols for selection of the destination hospital, which protocols shall be strictly followed by paramedic personnel and on-line medical control physicians, except when a departure from protocol is justified on the basis of special considerations of patient care or practical barriers to implementation (e.g., blocked roads, hospital divert status, etc.). This Contract is entered into by both parties pursuant to a mutual assumption that, as set forth in Attachment A, "Uniform EMS Ordinance," transport protocols approved by the Medical Control Board shall strictly adhere to the following priorities of consideration, and shall recognize these priorities in the sequence presented:
- a. **First Consideration:** patient care and safety;
  - b. **Second Consideration:** patient/family choice; and
  - c. **Third Consideration:** fairness in distribution of patients among hospitals. In this regard, the following rules shall apply:
    - i. **Non-Emergencies.** All "non-emergency patients" (as defined by patient-assessment protocols approved by the Medical Control Board) shall be transported to the destination selected by the patient, the patient's family, or the patient's personal physician, without exception.
    - ii. **Non-Life-Threatening Emergencies.** Patients experiencing a "non-life threatening emergency" (as defined by patient-assessment protocols approved by the Medical Control Board) shall be transported to the facility of choice designated by the patient, the patient's family, or the patient's personal physician, or if no such preference is stated, to the nearest hospital approved by the Medical Control Board for receipt of patients experiencing non-life threatening emergencies.



- iii. **Life-Threatening Emergencies.** Patients experiencing life-threatening emergencies (as defined by patient-assessment protocols approved by the Medical Control Board) shall, in accordance with transport protocols approved by the Medical Control Board, be delivered to the "nearest appropriate facility," taking into consideration the patient's condition and location, the patient's medical requirements, and the respective capabilities of hospitals within and, for some types of patients, outside) the "Contract Service Area." Such transport protocols shall not be inconsistent with then-currently-approved trauma system protocols (when available).
- iv. **Enforcement.** Inappropriate and unjustified deviations from these patient-destination protocols by a paramedic without direct authorization by a Base Station Physician or inappropriate and unjustified instructions regarding such deviation by a Base Station Physician shall be subject to sanction by the Medical Control Board provided such sanctions are applied in accordance with due process procedures approved by the City Attorney. Such sanctions may include reprimand, suspension of certification, or revocation of certification, depending upon frequency and severity of error.

**2.13 DOCUMENTS.** The City's Request for Proposal and the proposal of ETMC-EMS dated October 3, 2000, and submitted October 10, 2000, are part of this Contract.

### ARTICLE III. SCOPE AND QUALITY OF SERVICES

**3.01 CLINICAL STANDARDS AND QUALITY IMPROVEMENT.** The initial standards of clinical quality, as well as the clinical upgrade schedules to occur on or before listed deadlines throughout the term of this Contract shall constitute contractually binding performance requirements under this Agreement.

**3.02 RESPONSE TIME RELIABILITY.** ETMC-EMS will maintain a response time on all transports under this Agreement as set forth below:

- (i) **Life Threatening Emergency Calls** will have a response time 90% or better of 8 minutes and 59 seconds.
- (ii) **Non-Life Threatening Emergency Calls** will have a response time 90% or better of 12 minutes and 59 seconds.
- (iii) **Unscheduled Routine Transfers** will have a response time 90% or better of 60 minutes and 59 seconds.
- (iv) **Scheduled Routine Transfers** will have a response time 90% or better of 20 minutes and 59 seconds.

The response time commitments set forth above shall constitute contractually binding performance requirements under this Contract. In this regard, the following definitions and protocols shall be employed for purposes of response time measurement, compliance reporting, and late run penalty assessment:

- a. **Definition.** Response time is herein defined as the elapsed time between the moment a request for ambulance service is received at ETMC-EMS's ambulance control center (i.e., the moment callback number and location are acquired, either by voice or by ANI/ALI 911 data transmission and confirmed) and the moment a first-arriving fully-equipped and staffed ETMC-EMS paramedic ambulance, paramedic-level Mutual Aid unit, paramedic-level 1st Response team, or advanced life support capable medical helicopter arrives at the scene; provided that in order to "stop the clock" such first-arriving unit shall be operated by ETMC-EMS or by a Mutual Aid unit or 1st Response Organization approved by the Medical Control Board and operating under subcontract to ETMC-EMS. For scheduled patient transfers, "time call received" shall be the agreed-upon appointment time of patient pickup.
- b. **Use of Mutual Aid Providers.** Subject to a finding by the Medical Control Board that the clinical quality of care provided by a proposed MICU staffed Mutual Aid provider, helicopter ambulance service, or 1st Response organization participating in ETMC-EMS's 1st Response Support Program and operating at the paramedic level, is deemed substantially equivalent to the quality of care required under this Contract, such paramedic units operated by Mutual Aid providers, 1st Response organization, and helicopter ambulance services responding at ETMC-EMS's request to locations within the Contract Service Area shall be deemed to "stop the clock" on behalf of ETMC-EMS.

- c. **Method of Measurement.** Response time standards shall be established and response time performance shall be measured in terms of "fractile distributions"-- *not* average response time measurements.
- d. **Call Classification.** For purposes of response time measurement, the applicable standard shall be based on each request's presumptive run code classification (i.e., life-threatening emergency, non-life-threatening emergency, unscheduled routine transport, and scheduled routine transport) as established at the time the call is dispatched by a person trained in the use of and correctly employing Medical Priority Dispatch Protocols proposed by the Medical Director and approved by the Medical Control Board. (Retrospective classification of priority code shall not affect measurement of response time compliance.)
- e. **En route Upgrades and Downgrades.** If a presumptive run code classification is upgraded to a higher priority while the ambulance is en route (as a result of information provided by a physician, 1st Responder or law enforcement officer at the scene), the applicable run code designation shall be the upgrade priority, and response time shall be measured from the moment of upgrade. If a presumptive run code classification is downgraded to a lower priority while the ambulance is en route (as a result of information provided by a physician or 1st Responder), the applicable run code designation shall be the downgraded priority and response time shall be measured from the original time of call receipt.
- f. **911 Interface Requirements.** Upon ETMC-EMS assuming full responsibility for dispatch, ETMC-EMS shall be free to employ at its own expense such CAD hardware and software and 911 system interface arrangements as ETMC-EMS deems most conducive to efficient operation and response time reliability. Each Member Jurisdiction shall cooperate fully with ETMC-EMS's reasonable requests to establish telephone call-transfer linkages and, where appropriate, 911 computer system interface arrangements (e.g., with ETMC-EMS functioning as a secondary PSAP), as requested by ETMC-EMS. 911 personnel shall transfer medical calls and callers to the ETMC-EMS Control Center as per protocols approved by the Medical Control Board.

**3.03 CUSTOMER SERVICE AND MEMBERSHIP PROGRAM.** Except for changes adopted by the Board of Directors of ETMC-EMS, ETMC-EMS shall comply with customer-service and accounts receivable management practices as provided herein.

**3.04 DISASTER ASSISTANCE.** During a declared disaster, locally or in a neighboring jurisdiction, the normal course of business under this Contract shall be interrupted from the moment the disaster occurs. Immediately upon such notification, ETMC-EMS shall commit such resources as are necessary and appropriate, given the nature of the disaster, and shall assist in accordance with disaster plans and protocols applicable in the locality where the disaster occurred. The disaster-related provisions of this Contract are:

- a. During such periods, ETMC-EMS shall be released from response time performance requirements, including late run penalties, until notified by the Administrator that disaster assistance may be terminated. At the scene of such

disasters, ETMC-EMS personnel shall perform in accordance with local disaster protocols established by that community.

- b. When disaster assistance has been terminated, ETMC-EMS shall resume normal operations as rapidly as is practical considering exhaustion of personnel, need for restocking, and other relevant considerations.
- c. During the course of the disaster, ETMC-EMS shall use best efforts to provide emergency coverage throughout the "Contract Service Area," and shall suspend non-emergency transport work as necessary, informing persons requesting such non-emergency service of the reason for the temporary suspension.

**3.05 NO AMBULANCE DEPLOYMENT RESTRICTIONS.** Every Member Jurisdiction shall have access to the resources of the EMS System, as dictated by fluctuations in consumer demand for service, weather conditions and disaster events. To ensure such flexibility in responding to shifting needs, ETMC-EMS will refrain from contractually committing any of its ambulances to the exclusive benefit of any jurisdiction contiguous as a result of expansion of the Contract Service Area.

**3.06 GRANDFATHER CLAUSE.** Nothing in this Contract shall be construed as preventing ETMC-EMS from honoring and fulfilling contractual commitments in effect as of the commencement date of this Contract, even if provisions of such contracts are in conflict with provisions set forth immediately above, provided, however, that no such existing contract containing provisions in conflict with the provisions of this Contract shall be extended or renewed unless amended to remove the conflicting provisions.

## ARTICLE IV. CONSIDERATION

Consideration for this Contract is an award of exclusive market rights subject to exemptions set forth in this Contract, the promises set forth herein, as well as any extension periods to which ETMC-EMS may be entitled.

- 4.01 MAXIMUM TOTAL AVERAGE BILL.** The maximum total average of all bills generated for ambulance service originating within the City of Mineola (exclusive of mileage charges), regardless of how such bills may be constructed from ETMC-EMS's schedule of itemized charges, shall not exceed \$ 443.54.
- 4.02 ANNUAL INFLATION ADJUSTMENTS.** ETMC-EMS shall annually permit adjustment of the ETMC-EMS Maximum Total Average Bill (as discussed in 4.01), the first adjustment being authorized on November 1, 2001. Any increase made to the Maximum Total Average Bill in such adjustment shall not exceed the percentage change in the Consumer Price Index on a nationwide basis over the most recent 12-month period for which published figures are available. ETMC-EMS has the discretion to accept all or a portion of the maximum allowable inflation adjustment and may apply those amounts in the manner determined by ETMC-EMS provided that such adjustment does not exceed the maximum allowable adjustment under this Contract.
- 4.03 ADJUSTMENT FOR EXCESS BILLINGS.** In the event ETMC-EMS's actual total average bill for services rendered in the City during the preceding contract period is found to be inadvertently in excess of the level permitted, the EMS Board shall delay the effective date of the inflation adjustment increase in that jurisdiction by a number of days sufficient to fully offset the amount of overpayment, as proposed by the Administrator and approved by the Board of Directors of the EMS Board.
- 4.04 EXTRAORDINARY ADJUSTMENTS FOR EXTERNALLY IMPOSED UPGRADES.** ETMC-EMS may periodically apply for extraordinary rate adjustments to offset the actual and reasonable marginal costs of implementing and maintaining clinical upgrades required by the Medical Control Board and approved by the EMS Board. Provided however, all such approvals of Extraordinary Adjustment shall be subject to optional review and confirmation or denial by the City.
- 4.05 EXTRAORDINARY ADJUSTMENTS FOR UNUSUAL COST INCREASES.** As may be justified by circumstances beyond ETMC-EMS's reasonable control (e.g., industry wide insurance cost increases of major magnitude, restoration of OPEC's pricing powers, etc.), ETMC-EMS shall be eligible for temporary but renewable (as justified and approved by the EMS Board) "extraordinary rate adjustment" when the Board of Directors of the EMS Board finds that the cause of such extraordinary increase in the cost of one or more factors of production necessary to produce quality pre-hospital care is due to an unusually large, rapid increase in the cost to ETMC-EMS of that factor of production, in which this increase is industry wide, not the result of poor purchasing practices and not the result of increased consumption of the factor of production. Provided, however, all such approvals of Extraordinary Adjustment shall be subject to optional review and confirmation or denial by the City.



## ARTICLE V. INSURANCE AND INDEMNIFICATION

**5.01 INSURANCE REQUIREMENTS.** At all times during the term of this Contract, and throughout any extension periods thereof, ETMC-EMS shall obtain and pay all premiums for and furnish an Accord Certificate of Insurance to the EMS Board for insurance as specified below. For liability arising solely from the actions or inactions of ETMC-EMS or ETMC-EMS's personnel, all such policies shall name the EMS Board, City of Mineola, and the Medical Control Board as "additional insureds." ETMC-EMS shall furnish the EMS Board with an Accord Certificate of Insurance indicating that the types and amounts of insurance required hereunder are in full force and effect and that the insurance carrier shall give the EMS Board thirty (30) days written advance notice of any cancellation, change, termination, failure to renew or renewal, or any change in coverage of any such policy or policies reflected on said certificate. Nothing in this Article V shall be deemed to prohibit the use of a program of insurance being "self-insurance" as that term is normally used as being a formally organized system of covering risks or to be a limitation upon the insured as to the deduction it may cause to be provided in connection with any of its respective insurance policies. Insurance coverage shall meet the following minimum requirements:

- a. **WORKER'S COMPENSATION.** Worker's Compensation Insurance as permitted by the laws of the State of Texas;
- b. **COMMERCIAL GENERAL LIABILITY.** Commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence combined single limits (CSL) for all claims resulting from bodily injury (including death) and/or property damage arising out of the operations of the ambulance service authorized hereunder;
- c. **AUTOMOBILE LIABILITY.** The following coverage is required:
  - i. **Uninsured Motorist.** Uninsured/underinsured motorist coverage, covering all automobiles and including all owned, hired, or leased vehicles in an amount equal to or greater than the minimum liability limits required by law; and
  - ii. **Employer's Non-owned Auto Coverage.** Employer's non-owned liability in an amount equal to the liability limits set forth in Subsection 2, immediately above.
- d. **AMBULANCE LIABILITY.** A policy covering the liability created by ambulance operation to a limit called for in Subsection b. hereof. It is further understood that due to the nature of this risk, it is presently necessary to obtain this coverage through the Assigned Risk Pool and that policy form must be accepted as offered.
- e. **MALPRACTICE.** Malpractice insurance in an amount no less than one million dollars (\$1,000,000) for each claim.

- f. **EXCESS LIABILITY INSURANCE UMBRELLA.** Excess liability insurance umbrella policy providing two million dollars (\$2,000,000) coverage per occurrence, and four million dollars (\$4,000,000) annual aggregate coverage in excess of all other liability policies prescribed herein;
- g. **SUBMISSION OF POLICIES.** Said insurance policies required hereunder shall be submitted to the Administrator. Satisfactory evidence that such insurance is at all times in full force and effect shall be furnished to the Administrator.
- h. **EFFECT OF CANCELLATION OR TERMINATION.** The cancellation or other termination of any policy of insurance required hereunder shall automatically revoke and terminate this Contract for ambulance service granted hereunder, unless another insurance policy complying with the provisions of this section shall be provided and be in full force and effect at the time of such cancellation or other termination.
- i. **"OCCURRENCE" FORM REQUIRED.** All coverage furnished hereunder shall be written on an "occurrence" basis—not a "claims-made" basis; provided, however, a combination of "claims made" coverage and "extended reporting endorsement" ("tail coverage") for an indefinite period following expiration of this Contract shall be considered equivalent to "occurrence" coverage. Furthermore, nothing in this provision shall be construed as prohibiting partial self-funding of defined aspects of coverage, provided self-funding financial arrangements and risk-management aspects are approved by the EMS Board, which approval shall not be unreasonably withheld.

**5.02 INDEMNIFICATION.** ETMC-EMS covenants and agrees that it will indemnify and hold harmless the EMS Board, the City, the Medical Control Board, and each Member Jurisdiction and their officers and employees, from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by ETMC-EMS during the performance of this Contract, except that neither ETMC-EMS, East Texas Medical Center Regional Healthcare System, nor any of their subcontractors, or assignees, will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the negligence of the EMS Board, or any Member Jurisdiction or any of their officers, agents, representatives or employees.

## ARTICLE VI. MAJOR DEFAULT AND REPLACEMENT PROVISIONS

- 6.01 MAJOR DEFAULT DEFINED.** Conditions and circumstances which shall constitute a major default by ETMC-EMS shall include but not be limited to the following:
- a. Supplying to the EMS Board during the contracting process, false information or information so incomplete as to effectively mislead;
  - b. Willful falsification of data supplied to the EMS Board or to the Medical Control Board during the course of operations, including by way of example but not by way of exclusion, dispatch data, patient report data, response time data, financial data, or willful downgrading of presumptive run code designations or deliberate omission of any other data required under this Contract;
  - c. Deliberate and unauthorized scaling down of operations to the detriment of performance during a "lame duck" period;
  - d. Failure to maintain equipment in accordance with generally accepted maintenance practices;
  - e. Willful attempts by ETMC-EMS to intimidate or otherwise punish non-management employees who desire to interview with or to sign contingent employment agreements with successful bidders following a subsequent bid cycle;
  - f. Chronic and persistent failure of ETMC-EMS's employees to conduct themselves in a professional and courteous manner, and to present a professional appearance;
  - g. Failure by ETMC-EMS to cooperate with and assist the EMS Board in its transfer of ETMC-EMS's operations after a major default has been declared by the EMS Board, as provided for in Subsection B, *next, even if it is later determined that such default never occurred or that the cause of such default was beyond ETMC-EMS's reasonable control*;
  - h. Failure to substantially and consistently meet or exceed the various clinical and response time standards, required hereunder; or
  - i. Substantial and chronic or intentional overbilling in violation of provisions of this Contract.
- 6.02 DECLARATION OF MAJOR DEFAULT AND TRANSFER OF SERVICE.** In the event the EMS Board determines that a major default has occurred, and if the nature of the default is, in the opinion of the EMS Board *and* of the Medical Control Board, such that public health and safety are endangered, ETMC-EMS shall be given written notice specifying the particular complaints and identifying them as appropriate by date, place, etc. with a reasonable opportunity (defined as 72 hours for deficiencies dangerous to public health and safety and 60 days for any other deficiencies) to correct said deficiency. In the event ETMC-EMS fails to correct said deficiency within the time as set forth above,

ETMC-EMS may thereafter be found to be in default (as set forth in Section 6.03). In such event, ETMC-EMS shall cooperate completely and immediately with the EMS Board to effect a prompt and orderly transfer to the EMS Board of ETMC-EMS's and the City of Mineola's responsibilities as set forth in Section 6.03.

- 6.03 MAJOR DEFAULT.** In the event of a major default and the failure to cure same as set forth in Section 6.02, ETMC-EMS shall transfer its responsibilities within 72 hours thereafter upon such finding of a major default by the EMS Board and confirmation by the Medical Control Board.
- 6.04 DEFAULT NOT DANGEROUS TO PUBLIC HEALTH AND SAFETY.** If the EMS Board declares ETMC-EMS to be in major default on grounds other than performance deficiencies dangerous to public health and safety, ETMC-EMS may dispute and legally resolve the EMS Board's claim of major default prior to transfer of ETMC-EMS's operations by the EMS Board.
- 6.05 "LAME DUCK" PROVISIONS.** Should ETMC-EMS fail to prevail in a future procurement cycle, the EMS Board shall obviously depend upon ETMC-EMS to continue provision of all services required under this Contract until the new contractor assumes service responsibilities. Under these circumstances, ETMC-EMS would, for a period of several months, serve as a "lame duck" contractor. To ensure continued performance fully consistent with the requirements of this Contract throughout any such "lame duck" period, the following "lame duck" provisions shall apply:
- a. Throughout such "lame duck" period, ETMC-EMS shall continue all operations and support services at substantially the same levels of effort and performance as were in effect prior to the award of the subsequent contract to a competing firm;
  - b. ETMC-EMS shall make no changes in methods of operation which could reasonably be considered to be aimed at cutting ETMC-EMS's service and operating costs to maximize profits during the final stages of this Contract; and
  - c. The EMS Board recognized that, if a competing firm prevails in a future procurement cycle, ETMC-EMS may reasonably begin to prepare for transition of service to the new contractor during the "lame duck" period, and the EMS Board shall not unreasonably withhold its approval of ETMC-EMS's requests to begin an orderly transition process, including reasonable plans to relocate staff, scale down certain inventory items, etc., so long as such transition activities do not impair ETMC-EMS's performance during the "lame duck" period, and so long as such transition activities are prior-approved by the EMS Board.

## ARTICLE VII. TERM AND RENEWAL

- 7.01 TERM OF AGREEMENT.** The initial term of this Agreement shall be three (3) years, commencing on October 27, 2000, and ending on October 26, 2003, unless either of the Parties shall give written notice to the other of its desire to terminate the Agreement earlier by providing such other Party with a written notice one hundred eighty (180) days prior to such desired termination date.
- 7.02 CONTRACT EXTENSION.** Upon completion of the initial term of this Agreement, such Agreement shall be renewable for one three-year extension. This Agreement shall automatically continue in force from the end of the initial term into the three year extension thereafter unless either of the parties shall give written notice to the other of its desire that this Agreement shall not pass into a succeeding extension term but shall terminate at the end of the then current term. Such notice of termination shall be received one-hundred eighty (180) days prior to the end of the then current term.



## ARTICLE VIII. REPORTS

**8.01 VERIFICATION OF USER-FEE CHARGES.** By May of each contract year, ETMC-EMS shall furnish to each Member Jurisdiction an annual audited financial report documenting the following information for the previous contract year:

- a. Gross revenues (exclusive of mileage charges) generated for the transport of patients by ETMC-EMS ground ambulance service originating with that jurisdiction;
- b. Total number of individual patients transported (one-way) by ETMC-EMS ground ambulance service originating within that jurisdiction
- c. An accounting of late-run penalty payments to and expenditures for the "CPR and 1st Response Support Program Fund." Such statement shall certify that expenditures of such funds have been used solely to fund direct, out-of-pocket costs of citizen CPR and related training and ETMC-EMS's 1st Response support program costs, and that none has been used to fund wages or salaries of personnel employed by ETMC-EMS, or to fund ETMC-EMS's administrative overhead costs.

**8.02 RESPONSE TIME COMPLIANCE.** Within 10 days after the close of each calendar month, ETMC-EMS shall provide to each Member Jurisdiction, and to the Medical Control Board, an accounting of response time performance relative to *every request* for ambulance service originating within that jurisdiction, presented in the following format:

Response Time	Life-Threatening Emergencies			Non-Life-Threatening Emergencies			Unscheduled Routine Transfers			Scheduled Routine Transfers*		
	#	%	Cum%	#	%	Cum%	#	%	Cum%	#	%	Cum%
0 - ≤ 1m59s												
1 - ≤ 2m59s												
2 - ≤ 3m59s												
3 - ≤ 4m59s												
4 - ≤ 5m59s												
etc.	etc.			etc.			etc.			etc.		
≤ 120 min.												

\* i.e., scheduled 24 hours or more in advance of requested time of pickup.

**8.03 REQUESTS FOR EXTRAORDINARY ADJUSTMENT.** Request for Extraordinary Adjustment to the Uniform Schedule shall be accompanied by documentation of incremental cost and revenue projections, underlying utilization assumptions, amortization policies, and marginal-cost pricing rationale which support the amount of adjustment requested, along with such other related financial information as may be requested by the EMS Board.

## ARTICLE IX. GENERAL PROVISIONS

- 9.01 CHARACTER AND COMPETENCE OF PERSONNEL.** All persons employed by ETMC-EMS in the performance of work under this Contract shall be competent and holders of appropriate permits in their respective trades or professions. The EMS Board may demand the removal of any person employed by ETMC-EMS who chronically misconducts himself or is chronically incompetent or negligent in the due and proper performance of his duties, and such person shall not be reassigned by ETMC-EMS for production of services under this Contract without the written consent of the EMS Board, provided, however, that the EMS Board shall not be arbitrary or capricious in exercising its rights under this provision, and shall be required to document in writing the specific reasons for exercising rights relative to any given employee, and shall also give that employee an opportunity to defend himself in the presence of ETMC-EMS's chief executive officer and Medical Director, and the EMS Board's Board of Directors prior to removal.
- 9.02 PERMITS AND LICENSES.** ETMC-EMS shall be responsible for obtaining all necessary permits and licenses required for initiation and completion of its work under this Contract.
- 9.03 ASSIGNMENT.** ETMC-EMS will have the right to assign this Agreement to any related or affiliated entity of the East Texas Medical Center Regional Healthcare System without any party's prior consent. Otherwise, this Agreement shall not be assigned or transferred without the expressed written consent of the EMS Board. Such written consent shall not be unreasonably withheld.
- 9.04 RIGHTS AND REMEDIES NOT WAIVED.** ETMC-EMS agrees that the work specified in this Contract shall be completed without further consideration of the market rights provided for herein and that the acceptance of work and the payment of user-fees shall not be held to prevent maintenance of an action for failure to perform such work in accordance with this Agreement. In no event shall payment by a Member Jurisdiction (if any such payments are made) hereunder constitute or be construed to be a waiver by the EMS Board of any default or covenant or any default which may then exist on the part of ETMC-EMS and the making of such payment while any such default exists shall in no way impair or prejudice any right or remedy available to the EMS Board with respect to such default.
- 9.05 ATTORNEY FEES.** If either the EMS Board or ETMC-EMS institutes litigation against the other party to secure its rights pursuant to this Contract, the prevailing party shall be entitled to the actual and reasonable costs of litigation and reasonable attorney's fees in addition to any other relief to which such party may be entitled.
- 9.06 NON-DISCRIMINATION.** ETMC-EMS agrees as follows:
- a. ETMC-EMS will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, disability, sex, or age. ETMC-EMS will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, national origin, disability, sex or age. Such action shall include, but not be limited to the following: (i) employment, upgrading, demotion or transfer;

(ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. ETMC-EMS agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

b. ETMC-EMS will, in all solicitations or advertisements for employees placed by or on behalf of ETMC-EMS, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, disability, sex or age.

**9.07 COMPLIANCE WITH LAWS.** The services furnished by ETMC-EMS under this Contract shall be rendered in substantially full compliance with applicable federal, state and local laws, rules and regulations. It shall be ETMC-EMS's responsibility to determine which laws, rules, and regulations apply to the services rendered under this Contract and to maintain compliance with those applicable standards at all times.

**9.08 SEVERABILITY.** In the event any provision hereunder is determined to be illegal, invalid or unenforceable under applicable law, said provision shall be deemed deleted from this Agreement as if never contained herein and the remainder of this Agreement shall remain enforceable.

**9.09 HEADINGS.** The paragraph headings, articles, sections and captions contained in this Contract are solely for the convenience of the Parties and shall in no manner be construed as part of this Agreement.

**9.10 CHOICE OF LAW.** This Agreement shall be governed by the laws of the State of Texas, and, in the event of litigation with respect to this Agreement or any of its terms, venue shall rest in Wood County, Texas.

- 9.12 ENTIRE AGREEMENT.** This Agreement supersedes any and all other agreements, whether oral or in writing, between the Parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained herein shall be valid or binding unless in writing signed by all Parties.
- 9.13 AMENDMENT.** This Agreement may be amended by a writing upon the agreement of both Parties so as to conform to the law or any changes in the law and/or regulations applicable to the terms of this Agreement. If the City or the EMS Board refuses to amend the Agreement in accordance with this Section, such action shall be considered a breach of this Agreement and the Agreement may be terminated by ETMC-EMS.
- 9.14 NO WAIVER.** The failure of either party to insist at any time upon the strict observance of performance of any provision of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any right or remedy of such party or be construed as a waiver or relinquishment thereof with respect to subsequent defaults or breaches. Every right and remedy given by this Agreement to the Parties hereto may be exercised from time to time and as often as may be deemed expedient by the appropriate party.
- 9.15 INCORPORATION OF SCHEDULES.** Schedule A, Uniform EMS Ordinance; Schedule B, Commitment to 1st Responder Support and Quality Care; and Schedule C, Quality Improvement Program, are hereby expressly incorporated within this Contract as though written and contained directly within the text of this Contract.
- 9.16 SEVERANCE PENALTY.** ETMC-EMS shall pay a severance penalty in the amount of \$50,000.00, pursuant to the provisions for declaration of major default set forth herein.
- 9.17 CORRESPONDENCE.** All notices hereunder by either Party to the other shall be in writing, delivered personally, by certified or registered mail (postage prepaid), return receipt requested, or by overnight courier services (charges prepaid), and shall be deemed to have been duly given when delivered personally, when deposited in the United States mail, or delivered to the overnight courier, addressed as follows:

If to ETMC-EMS:

Anthony Myers, Vice President  
East Texas Medical Center  
Emergency Medical Service  
P. O. Box 387  
Tyler, Texas 75710

If to EMS Board:

City of Mineola  
EMS Board  
P. O. Box 179  
300 Greenville Highway  
Mineola, Texas 75773

or to such other persons or places as either Party may, from time to time, designate by written notice to the other.

- 9.18 INDEPENDENT CONTRACTOR** In performing this Contract, ETMC-EMS is acting as an independent contractor with respect to City and the EMS Board, and neither ETMC-EMS nor any ETMC-EMS staff shall be considered employees of City or the EMS Board. It is agreed and acknowledged by the Parties that, as an independent contractor, ETMC-EMS retains the right to contract with and provide EMS services to entities and individuals other than the City and the EMS Board, and nothing in this Agreement shall be interpreted as limiting or restricting in any way ETMC-EMS's right to do so. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the Parties hereto, and nothing herein shall authorize either Party to act as agent for the other, except to the extent herein provided. City and the EMS Board shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all City and EMS Board personnel. Neither ETMC-EMS nor any ETMC-EMS staff shall be subject to any City or EMS Board policies solely applicable to City or EMS Board's employees or be eligible for any employee benefit plan offered by City or EMS Board.
- 9.19 FORCE MAJEURE.** Neither Party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service deemed to result, directly or indirectly, from the acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Party's employees, or any other similar cause beyond the reasonable control of either Party.
- 9.20 ACCESS TO RECORDS.** As an independent contractor of City and/or the EMS Board, ETMC-EMS shall, in accordance with 42 U.S.C., §1395x(v)(1)(I) (Social Security Act §1861(v)(1)(I) and 42 C.F.R., Part 420, Subpart D, §420.300, et seq., until the expiration of four (4) years after the furnishing of Medicare reimbursable Services pursuant to this Contract, upon proper written request, allow the Comptroller General of the United States, the Department of Health and Human Services, and their duly authorized representatives access to this Agreement and to ETMC-EMS's books, documents and records (as such terms are defined in 42 C.F.R., §420.301) necessary to verify the nature and extent of costs of Medicare reimbursable Services provided under this Contract. In accordance with such laws and regulations, if Medicare or Medicaid reimbursable services provided by ETMC-EMS under this Contract are carried out by the means of a subcontract with an organization related to ETMC-EMS, and such related organization provides the services at a value or cost of \$10,000 or more over a twelve (12) month period, then the subcontract between ETMC-EMS and the related organization shall contain a clause comparable to the clause specified in the preceding sentence. No attorney-client, accountant-client or other legal privilege will be deemed to have been waived by ETMC-EMS or the City or the EMS Board by virtue of this Contract.
- 9.21 ENTIRE AGREEMENT; MODIFICATION.** This Contract contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating




to such subject matter. This Contract may not be amended or modified except by mutual written agreement.

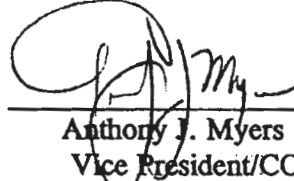
- 9.22 CHANGE IN LAW.** Notwithstanding any other provision of this Agreement, if the governmental agencies (or their representatives) which administer Medicare, any other payor, or any other federal, state or local government or agency passes, issues or promulgates any law, rules, regulation, standard or interpretation, or any court of competent jurisdiction renders any decision or issues any order, at any time while this Agreement is in effect, which prohibits, restricts, limits or in any way substantially changes the method or amount of reimbursement or payment for Services rendered under this Agreement, or which otherwise significantly affects either Party's rights or obligations hereunder, either Party may give the other notice of intent to amend this Agreement to the satisfaction of both Parties, to compensate for such prohibition, restriction, limitation or change. If this Agreement is not so amended in writing within ten (10) days after said notice was given, this Agreement shall terminate as of midnight on the tenth (10th) day after said notice was given.
- 9.23 CONSENTS, APPROVALS AND EXERCISE OF DISCRETION.** Except as may be herein specifically provided to the contrary, whenever this Agreement requires any consent or approval to be given by either Party, or either Party must or may exercise discretion the Parties agree that such consent or approval shall not be unreasonably withheld or delayed, and such discretion shall be reasonably exercised in good faith.
- 9.24 THIRD PARTIES.** None of the provisions of this Agreement shall be for the benefit of third parties or enforceable by any third party. Except as provided above, any agreement to pay an amount and any assumption of a liability herein contained, expressed or implied, shall only be for the benefit of the Parties hereto and such agreement or assumption shall not inure to the benefit of any third party, including an obligee.
- 9.25 PAID IN-SERVICE TRAINING.** ETMC-EMS will provide each EMT and Paramedic with sixty (60) paid hours for continuing education each year.
- 9.26 PARAMEDIC SKILL LEVELS.** Effective immediately, Paramedic skill levels will be implemented as follows:
- a. Texas State EMS-P Certification
  - b. Basic Trauma Life Support
  - c. Driver Training
  - d. Advanced Cardiac Life Support
  - e. Advanced Pediatric Emergency Care
  - f. National Registry (Paramedic)

9.27 COMMITMENT TO 1ST RESPONDER SUPPORT AND QUALITY CARE. ETMC-EMS is committed to providing assistance to 1st Responders and improvement of its program as set forth in Schedule B.

For the City of Mineola

  
\_\_\_\_\_  
Mayor (date) 11-21-00

For East Texas Medical Center dba East Texas Medical Center Emergency Medical Service

  
\_\_\_\_\_  
Anthony J. Myers (date) 10-27-00  
Vice President/COO

Approve as to Form and Legality:

\_\_\_\_\_  
\_\_\_\_\_

**SCHEDULE A**  
**UNIFORM EMS ORDINANCE**

**(ATTACHED)**

## SCHEDULE B

### COMMITMENT TO 1ST RESPONDER SUPPORT AND QUALITY CARE

ETMC-EMS' commitment to quality care extends to its 1st Responder agencies and personnel with whom we work through the Contract Service Area. Texas State EMS regulations require formal affiliation between every 1st Response organization and a licensed EMS provider. ETMC-EMS will coordinate and financially support the development of a formalized 1st Response Network by providing:

- a. State mandated affiliation for 1st Responders;
- b. Entry-level and in-service training programs (e.g., ECA, EMT, Special Skills, Paramedic completion, and BTLS for 1st Responders);
- c. Paramedic-assist training and assistance with purchasing the automatic defibrillator. The automatic defibrillator or AED unit will significantly improve the survivability of heart attack victims in rural areas. Participating volunteer 1st Responders with AEDs can provide cardiac patients with direct intervention that could significantly enhance chances for survival. ETMC-EMS will provide the following assistance;
  - i. Automated External Defibrillation certification;
  - ii. Integrated quality improvement program;
  - iii. On-scene medical equipment exchange program;
  - iv. Prompt return to station of 1st Responders accompanying crew during transport;
  - v. Assistance with fund-raising and purchasing automated defibrillators; and,
  - vi. Sponsorship of at-cost system-wide group purchasing of medical supplies.

This Network is funded by way of the 1st Responder Support Fund, as set forth in this Contract.



**SCHEDULE C**  
**QUALITY IMPROVEMENT PROGRAM.**

The Quality Improvement Program of ETMC-EMS is designed to provide review and evaluation of clinical care delivered by ETMC-EMS, with emphasis upon constructive feedback to strengthen performance of ETMC-EMS as a whole (e.g., through targeted in-service programs, modified standards for recruitment, and protocol modification), and to identify and correct isolated performance deficiencies.

Clinical standards will be set by the Medical Director and it will be the responsibility of the QI Manager and assigned Field Training Officers to assist ETMC-EMS in meeting and exceeding these standards through tracking and measuring compliance criteria as they pertain to established medical protocol and clinical standards. Basic features of the Quality Improvement Program include:

1. In addition to requirements for State certification, prospective employees shall be subject to skills testing, written testing, background check, drug testing, and psychological evaluation prior to employment.
2. Upon initial employment, new employees shall complete a standardized EMS orientation program consisting of a minimum of 40 hours of classroom instruction in protocols and practices unique to the ETMC-EMS system, haz-mat training, and a Driver Training Program.
3. Upon completion of initial orientation, new employees shall acquire not less than 40 hours experience and observation as a "3rd rider."
4. Upon completion of "ride-along" requirements, new employees shall be paired for not less than 3 months observation and on-going orientation with a Field Training Officer having not less than 3 years EMS field experience and approved for such responsibility by the Medical Director, except in the case of those new employees who have demonstrated previous experience at their level of certification and may at the discretion of the Medical Program Director have such probation time shortened.
5. Upon successful completion of the 3 month probationary period under the direct observation of a Field Training Officer, and subject to confirmation by the Medical Director and the Medical Control Board, the new employee is certified to serve as a member of the ETMC-EMS team.
6. Patient care rendered by employees will be the subject of a focused review and field observation at least once each year.
7. All charts documenting advanced life support measures will be subject to 100% chart audit. Every 10th sample of all other charts will also be subject to routine chart audit.

8. The QI program will work with the education department to track continuing education of employees and to set up remedial training as needed for employees.
9. To identify and correct possible systemic deficiencies relative to specific presenting problems, chief complaints, or presumptive diagnoses, an extensive review of the most recent 50 to 100 cases of a specific type (e.g., chest pain) shall be conducted on a monthly basis, and adjustments made to training.