

## PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF BURLESON** (the “City”), a home rule municipal corporation situated in portions of Tarrant and Johnson Counties, Texas and **DR. DENNIS R. HASLAM, JR.**, an individual (“Consultant”).

### **1. SCOPE OF SERVICES.**

Consultant hereby agrees to provide the City with professional services for the purpose of **the services outlined in Attachment A and B** Attached hereto and incorporated for all purposes incident to this Agreement. More specifically describing the services to be provided hereunder.

City hereby appoints and Consultant accepts the appointment of **Dr. Dennis R. Haslam, Jr., MD**, to serve as the **CHIEF MEDICAL DIRECTOR** and **CHIEF MEDICAL OFFICER** (“**MEDICAL DIRECTOR**”) for City. Except as otherwise provided herein, Consultant will not appoint, subcontract or designate any other physician or physician contractor to perform any of the duties, responsibilities, and services required of the **MEDICAL DIRECTOR** in accordance with this contract unless approved in advance by City’s City Manager in writing.

### **2. TERM.**

This Agreement shall commence upon execution by the parties (“Effective Date”), and shall be for three years after the Effective Date (the “Expiration Date”). Articles 6 and 8 herein shall survive the term of this agreement.

### **3. COMPENSATION.**

The City shall pay Consultant in accordance with the fee schedule incorporated herein as Attachment B, and subject to the other terms and conditions of this Agreement, in exchange for completion of all tasks and delivery of all services listed in Attachment A, Scope of Services. Consultant shall not perform any additional services for the City not specified by this Agreement unless the City requests and approves in writing the additional services and costs for such services.

The Consultant shall submit monthly invoices to the City. Invoices shall contain a detailed breakdown to include: task or deliverables to the City and date provided for the billing period, the amount billed for each task or deliverable, and the total amount due.

Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Consultant’s invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

**4. TERMINATION.**

4.1. Written Notice.

The City or Consultant may terminate this Agreement at any time and for any reason by providing the other party with 30 days written notice of termination.

4.2 Non-appropriation of Funds.

In the event no funds or insufficient funds are appropriated by the City in any fiscal period for any payments due hereunder, City will notify Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

4.3 Duties and Obligations of the Parties.

In the event that this Agreement is terminated prior to the Expiration Date, the City shall pay Consultant for services actually rendered or consultant shall reimburse the City for services paid for but not actually rendered.

**5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.**

Consultant hereby warrants to the City that Consultant has made full disclosure in writing of any existing or potential conflicts of interest related to Consultant's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Consultant hereby agrees immediately to make full disclosure to the City in writing. Consultant, for itself and its officers, agents and employees, further agrees that it shall treat all information provided to it by the City as confidential and shall not disclose any such information to a third party without the prior written approval of the City. Consultant shall store and maintain City information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Consultant shall notify the City immediately if the security or integrity of any City information has been compromised or is believed to have been compromised.

**6. RIGHT TO AUDIT.**

Consultant agrees that the City shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the consultant involving transactions relating to this Contract at no additional cost to the City. Consultant agrees that the City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in all its subcontractor agreements hereunder a provision to the effect that the subcontractor agrees that the City shall, until expiration of three (3) years after final payment of the subcontract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract, and further that City shall have access during normal working hours to all subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. City shall give subcontractor reasonable notice of intended audits.

**7. INDEPENDENT CONTRACTOR.**

It is expressly understood and agreed that Consultant shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, Consultant shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors and subcontractors. Consultant acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its officers, agents, servants and employees, and Consultant, its officers, agents, employees, servants, contractors and subcontractors. Consultant further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Consultant.

**8. *This Section intentionally left blank.***

**9. ASSIGNMENT AND SUBCONTRACTING.**

Consultant shall not assign or subcontract any of its duties, obligations or rights under this Agreement.

**10. INSURANCE.**

Consultant shall provide the City with certificate(s) of medical malpractice insurance documenting policies of the following minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

**10.1 Coverage and Limits**

**10.1.1 Professional Liability:** covering the services to be provided under this Agreement including the duties of Medical Director and emergency medical services in the amount of \$1,000,000.00 per occurrence with a minimum \$3,000,000.00 annual aggregate shall be maintained at all times during the term of this contract. If coverage is provided on a “claims made” basis, extended period or “tail” coverage shall be provided for a minimum of one year after the expiration date of this contract. Coverage may be provided through a surplus lines insurance company duly authorized by the Texas State Board of Insurance.

## 10.2 Certificates.

Certificates of Insurance evidencing that the Consultant has obtained all required insurance shall be delivered to the City prior to Consultant proceeding with any work pursuant to this Agreement. All applicable policies shall be endorsed to name the City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement. The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage. A minimum of thirty (30) days notice of cancellation or reduction in limits of coverage shall be provided to the City. Ten (10) days notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto Consultant's insurance policies. Notice shall be sent to the Purchasing Manager, City of Burleson, 141 W. Renfro, Burleson, Texas 76028, with copies to the City Attorney at the same address.

## 10.3 Additional Insurance Requirements.

The insurance required herein must be provided by an insurer licensed to do business in the State of Texas. The insurance required herein must be provided by an insurer rated by the A.M. Best as "A-" or better or are rated "A" by Standard and Poor's. The insurance required herein shall be in full force and effect at all times during this Agreement.

In addition to Certificates of Insurance as provided by insurers, Consultant shall provide notice for any change in coverage including the suspension, voiding, cancellation, reduction in coverage or in limits to City as soon as reasonably possible. If the policy is cancelled for non-payment of premium, only ten (10) days notice is required.

## 11. **COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.**

Consultant agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations. If the City notifies Consultant of any violation of such laws, ordinances, rules or regulations, Consultant shall immediately desist from and correct the violation.

## 12. **NON-DISCRIMINATION COVENANT.**

Consultant, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Consultant's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. If any claim arises from an alleged violation of this non-discrimination covenant by Consultant, its personal representatives, assigns, subcontractors

or successors in interest, Consultant agrees to assume such liability and to indemnify and defend the City and hold the City harmless from such claim.

**13. NOTICES.**

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Burleson  
City Manager  
141 W. Renfro St.  
Burleson, TX 76028

To CONSULTANT:

Dr. Dennis R. Haslam, Jr.  
1721 C.R. 703A  
Alvarado, TX 76009

**14. GOVERNMENTAL POWERS.**

It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

**15. NO WAIVER.**

The failure of the City or Consultant to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of the City's or Consultant's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

**16. GOVERNING LAW / VENUE.**

This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Johnson County, Texas or the United States District Court for the Northern District of Texas.

**17. SEVERABILITY.**

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**18. FORCE MAJEURE.**

The City and Consultant shall exercise their best efforts to meet their respective duties and

obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

**19. HEADINGS NOT CONTROLLING.**

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**20. REVIEW OF COUNSEL.**

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

**21. AMENDMENTS / MODIFICATIONS / EXTENSIONS.**

No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.

**22. ENTIRETY OF AGREEMENT.**

This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Consultant, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

**23. SIGNATURE AUTHORITY.**

The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

**24. NO WAIVER OF GOVERNMENTAL IMMUNITY.**

Nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein.

**25. MANDATORY OWNERSHIP DISCLOSURE PROVISION.**

Consultant shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to City at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.

**26. MANDATORY ANTI-BOYCOTT PROVISION.** Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate:

- i. Pursuant to Section 2271.002 of the Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- ii. Pursuant to SB 13, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iii. Pursuant to SB 19, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iv. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Consultant certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, and otherwise in conformance with said statute. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

27. *This Section intentionally left blank.*

**28. NO THIRD-PARTY BENEFICIARIES.**

Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement, provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.

**29. BASIC SAFEGUARDING OF CONTRACTOR INFORMATION SYSTEMS.**

The Consultant shall apply basic safeguarding requirements and procedures to protect the Consultant's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple

transactional information, such as that is necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements “reflective of actions a prudent business person would employ” which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

Consultant shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

**30. EVALUATION.**

This Agreement including without limitation all services performed pursuant to this Agreement shall be subject to evaluation by the Burleson City Council in accordance with current laws, ordinances, policies, regulations or other directives as they may be amended from time to time by the Burleson City Council.

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## **ATTACHMENT A SCOPE OF WORK**

The Medical Director will provide sufficient medical expertise and supervision to meet the state law requirements of an "off-line Medical Director". The Medical Director will be responsible for providing City of Burleson's Fire/EMS Department personnel with the medical supervision and licensed physician control statutorily required for their performance of intravenous administration of emergency resuscitative drugs, the performance of sophisticated technical emergency and basic life support procedures as well as intravenous catheterizations, electrical defibrillations and other invasive procedures.

In addition, the Medical Director will:

a. Establish standing orders and protocols for the issuance of medical service by Burleson Fire/EMS Department ("BFD") personnel, and shall prescribe medication and supplies necessary for the ongoing provision of medical services by the Burleson Fire/EMS Department;

b. Approve the level of pre-hospital care which may be rendered locally by each of the personnel employed by BFD under the medical director's supervision, regardless of the level of state certification or licensure, before the certificate or licensee is permitted to provide such care to the public;

c. Establish and monitor compliance with field performance guidelines for BFD personnel. Note: The Medical Director will have the ability to respond to incidents riding with an on duty supervisor or ambulance. There is no expectation that the Medical Director independently respond to emergency incidents;

d. Establish and monitor compliance with training guidelines which meet or exceed the minimum standards set forth in the Texas Department of State Health Services EMS regulations;

e. Develop, implement, and revise protocols and/or standing delegation orders, if appropriate, governing prehospital care and medical aspects of patient triage, transport, transfer, dispatch, extrication, rescue, and radiotelephone-telemetry communication by BFD;

f. Direct an effective system audit and quality assurance program;

g. Determine standards and objectives for all medically related aspects of operation of BFD operations including the inspection, evaluation, and approval of the system's performance specifications;

h. Function as the primary liaison between the BFD administration and the local medical community, ascertaining and being responsive to the needs of each;

i. Administration outlining the specific responsibilities and authority of each. The agreement should describe the process or procedure by which a medical director may withdraw responsibility for BFD personnel for noncompliance with the Emergency Medical Services Act, the Health and

Safety Code, Chapter 773, the rules adopted in this chapter, and/or accepted medical standards;

j. Take or recommend appropriate remedial or corrective measures for BFD personnel, in conjunction with local administration, which may include, but are not limited to, counseling, retraining, testing, probation, and/or field preceptorship;

k. Suspend a certified BFD individual from medical care duties for due cause pending review and evaluation;

l. Establish the circumstances under which a patient might not be transported;

m. Establish the circumstances under which a patient may be transported against his or her will in accordance with state law, including approval of appropriate procedures, forms, and a review process;

n. Establish criteria for selection of a patient's destination;

o. Develop and implement a comprehensive mechanism for management of patient care incidents, including patient complaints, allegations of substandard care, and deviations from established protocols and patient care standards;

p. Shall submit a detailed report to BFD Administration quarterly. This report will include a listing of his/her activities relative to their compliance to responsibilities of this position;

q. Shall promote EMS research and evidence-based quality improvement;

r. Shall be familiar with the concepts of a mobile community healthcare program;

s. Medical malpractice insurance must be active at least 7 days prior to the actual commencement of work.

t. Office space may be shared/swing space; access to a computer and desk phone to be provided along with central secured filing space.

u. The Medical Director will have the ability to respond to incidents as needed. Transportation will be provided via City of Burleson Fire/EMS Department personnel, such with a supervisor, ambulance, and/or fire apparatus. When on scene, Medical Director must adhere to Fire Department Policies for protective equipment/hygiene The Medical Director will not independently respond to emergency incidents.

v. Input/attendance is required at Protocol Meetings.

w. Responses/acknowledgement to internal inquires must be received within 72 hours.

x. Employment status for Fire/EMS Department employees will be the responsibility of City of Burleson Fire/EMS Administration.

y. The Medical Director will be responsible for assisting in the implementation and ongoing monitoring of the City of Burleson's infection control plan, providing medical advice to City employees following exposure incidents, and responding to biohazard events involving City personnel, such as needle sticks or similar exposures.

## **SCHEDULE**

The EMS Medical Director should work approximately 48 weeks per year with an estimated 4 hours per week for a total of approximately 16 hours per month. An additional approximate 20 hours of work per month will be mutually scheduled and agreed upon between fire administration and the medical director to address needs such as but not limited to, continuing education, staff credentialing, and field observations. In addition to the weekly and monthly work and estimated 50 hours of work annually may be mutually scheduled and agreed upon between fire administration and the medical director to attend relevant conferences, workshops, or dedicated time to work on protocol and policy revisions. The work will be at the Burleson Fire/EMS facilities or remotely as mutually scheduled and agreed upon between fire administration and the medical director

- a. Establish on-call/backup for when out of the country/vacation and after-hours coverage.
- b. Hours per Month approximately 36 hours
  1. Minimum Hours Required Per Week 4, with balance to be made up other weeks of the weeks of month if needed.
  2. Four weeks of time off per year
  3. In a mutually agreeable format, an invoice to be provided to City at the end of each month.
  4. The maximum allowable worked hours per year for the medical director shall not exceed 500 hours unless mutually agreed upon between the City Manager and the medical director

## **QUALIFICATIONS**

The Medical Director must meet the following qualifications:

- a. Current license to practice medicine in the State of Texas (MD or DO);
- b. Licensed by DEA and Texas DPS to prescribe and administer Schedule 11-V controlled substances;
- c. Must have primary specialty in Emergency Medicine;
- d. Must have or be eligible for board certification within one (1) year of the Effective Date of the Agreement in Emergency Medicine by the American Board of Emergency Medicine; American Board of Emergency Medicine Board certification in EMS subspecialty preferred.

e. Educational and professional experience necessary to serve as an EMS Medical Director;

f. Must be able to provide a schedule of office hours held at Burleson Fire/EMS Department facilities; with sufficient office hours to perform the duties outline in 22 TAC §197.3. “Off-line Medical Director”; and

g. Hold Texas Medical Malpractice Insurance.

## **DOCUMENTS**

Copies of license/certifications must be provided to City with signed contract.

a. License to practice medicine in the state of Texas (MD or DO)

b. License to prescribe and administer Schedule 11-V controlled substances

c. Board certification in Emergency Medicine

d. A minimum of 12 hours of formal continuing medical education (CME) in the area of EMS medical direction or Confirmation of Texas Medical Director Course

**ATTACHMENT B  
FEE SCHEDULE**

**COMPENSATION:**

For all professional services included in Attachment 'A', Scope of Services, the CONSULTANT shall be compensated a lump sum monthly fee of \$5,000.00 per month billed to the City of Burleson monthly. The total monthly fee shall be considered full compensation for the services each month as described in Attachment 'A', including all labor materials, supplies, and equipment necessary to deliver the services.

The consultant agrees to submit an invoice no later than the 10<sup>th</sup> of the month following the completion of the work. Upon receipt of the invoice, the City agrees to pay the Consultant in accordance with the terms of the Agreement.

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**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement:

**CITY OF BURLESON:**

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

Name: Tommy Ludwig

Title: City Manager

Date: \_\_\_\_\_

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

Name: Dennis R. Haslam, Jr., MD

Title: Medical Director

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

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

City Attorney, Assistant City Attorney,  
or Deputy City Attorney