

**MEMORANDUM OF AGREEMENT BETWEEN**

**CLEARWATER, KANSAS**

**AND**

**SEDGWICK COUNTY, KANSAS**

This Memorandum of Agreement (MOA) between the City of Clearwater, Kansas ("Clearwater") and Sedgwick County, Kansas (County) (collectively the "Parties") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 for purposes of providing an outline of responsibilities and support for ambulance response to be provided by Sedgwick County EMS ("SCEMS") to the city of Clearwater, Kansas.

1. **SCOPE:** SCEMS will provide emergency response and transport services for Clearwater as described herein. County's Emergency Communications service will dispatch SCEMS on calls in the City of Clearwater and into the areas outside the City of Clearwater which are within Clearwater's response area. SCEMS ambulance service will respond to all calls for service, 7 days a week, 24 hours a day, 365 days a year, until Clearwater EMS responds and disregards SCEMS. SCEMS will provide full emergency paramedic and patient transport services, to include Basic Life Support (BLS), Advanced Cardiac Life Support (ACLS), and treatment of physiological incidents (e.g., decompression sickness or DCS).

2. **TERM:** This MOA takes effect beginning on the day after the last Party signs, which is written above, and will continue until June 30, 2019.

**3. RESPONSIBILITIES OF THE PARTIES:**

**3.1. Clearwater will —**

3.1.1. Ensure telephone and radio systems between SCEMS and Clearwater EMS are operational between the MECC and Sedgwick County Dispatch Center for SCEMS and are tested on a daily basis.

3.1.6. Provide a point of contact (POC) responsible for this agreement. Clearwater's interim directors are appointed as POC for this agreement and have full authority to act for his or her respective agency on all matters relating to the daily operation of this agreement. Notice of a new POC will be provided upon assumption of duties.

**3.2. SCEMS will —**

3.2.1. Furnish all labor, management, supervision, vehicles, supplies, equipment, transportation, facilities, and emergency transport services for the responses made by SCEMS. SCEMS emergency care will cover the range of ambulance services provided at the same or higher standards of care provided in the local civilian community, with the same priority.

3.2.2. Meet ambulance and emergency responder education, licensing, certification, and training requirements necessary to comply with the State of Kansas standard.

3.2.3. Only release medical information obtained during the course of this agreement to medical treatment facilities with a valid need for the information in accordance with the Health Insurance Portability and Accountability Act (HIPAA).

3.2.4. Ensure all employees of SCEMS have completed a criminal history background check, performed by the Sedgwick County Sheriff's Office at the time of consideration for employment.

3.2.5. Comply with Occupational Safety and Health Administration (OSHA) guidelines for emergency services and emergency responders to include vaccinations for Hepatitis B.

3.2.6. Provide a POC responsible for this agreement. The Director of Sedgwick County EMS is appointed as SCEMS POC responsible for this agreement by appointment from SCEMS. This designated person has full authority to act for his or her respective agency on all matters relating to the daily operation of this agreement. The POC will be available by telephone during SCEMS operating hours. Notice of a new SCEMS POC will be provided upon assumption of duties.

4. PERSONNEL: Each Party is responsible for all costs of its personnel, including pay and benefits, support, and travel. Each Party is responsible for supervision and management of its personnel.

#### 5. GENERAL PROVISIONS:

5.1. POINTS OF CONTACT: The following points of contact (POC) will be used by the Parties to communicate on all matters related to this MOA. Each Party may change its point of contact upon reasonable notice to the other Party.

For Clearwater:

Clearwater EMS  
Attn: Justin Patrick or Esther Harp  
319 W. Ross  
Clearwater, KS 67026

For Sedgwick County:

Sedgwick County EMS  
Attn: Director  
1015 Stillwell  
Wichita, Kansas 67213

**5.2. MODIFICATION OF AGREEMENT:** This MOA may only be modified by the written agreement of the Parties, duly signed by their authorized representatives.

**5.3. DISPUTES:** Any disputes relating to this MOA will, subject to any applicable law, be resolved by consultation between the Parties.

**5.4. TERMINATION OF AGREEMENT:** This MOA may be terminated by either Party by giving at least 14 calendar days written notice to the other Party or at any time upon the mutual written consent of the Parties. Notice of termination notice will be sent in accordance with section 5.1 herein.

**5.5. TRANSFERABILITY:** This Agreement is not transferable except with the written consent of the Parties.

**5.6. ENTIRE AGREEMENT:** It is expressly understood and agreed that this MOA and Appendix A (attached) represent the entire agreement between the Parties regarding the MOA's subject matter.

**AGREED:**

For Sedgwick County, Kansas

\_\_\_\_\_  
DAVID T. DENNIS, Chairman  
Commissioner, Third District

\_\_\_\_\_  
(Date)

For Clearwater, Kansas

  
\_\_\_\_\_  
Burt Ussery  
Mayor

1/8/19  
\_\_\_\_\_  
(Date)

**APPROVED AS TO FORM ONLY:**

  
\_\_\_\_\_  
KAREN L. POWELL  
Deputy County Counselor

\_\_\_\_\_  
(Date)

  
\_\_\_\_\_  
Austin K. Parker  
City Attorney

1/8/19  
\_\_\_\_\_  
(Date)

ATTEST:

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**KELLY ARNOLD**  
**County Clerk**

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**(Date)**

**APPENDIX A**  
**SEDGWICK COUNTY MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT**

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in the Sedgwick County Mandatory Contractual Provisions Attachment, which is attached hereto, are hereby incorporated in this Agreement and made a part thereof. In the event of conflict between the provisions of this Agreement and the Sedgwick County Mandatory Contractual Provisions Attachment, the terms of the Sedgwick County Mandatory Contractual Provisions Attachment will control."

The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said contract being the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Chief Financial Officer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to County under the Agreement. County will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon termination of the Agreement by County, title to any such equipment shall revert to Contractor at the end of County's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.
4. **Disclaimer of Liability:** County shall not hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any Agreement and/or this Contractual Provisions Attachment will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. County is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, County shall provide to the Contractor a certificate of tax exemption. County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** County shall not be required to purchase any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the County and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the County. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any County employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the County.
11. **Confidentiality:** Contractor may have access to private or confidential data maintained by County to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et*

seq.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the County promptly at the request of County in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by County, shall destroy or render such data or material unreadable.

12. **Cash Basis and Budget Laws.** The right of the County to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the County in relation to this Agreement prohibits the County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the County in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify County within the same five (5) business days, with the County reserving the same right to terminate for breach as set forth herein.
15. **HIPAA Compliance.** Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); the Genetic Information Nondiscrimination Act of 2008 ("GINA"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended (collectively referred to as "HIPAA"), to the extent that the Contractor uses, discloses or has access to protected health information as defined by HIPAA. Under the final Omnibus Rule effective March 2013, Contractor may be required to enter into a Business Associate Agreement pursuant to HIPAA.
16. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
17. **Tax Set-Off.** If, at any time prior to or during the term of any executed agreement, Contractor is delinquent in the payment of real and/or personal property taxes to Sedgwick County, and the delinquency exists at the time payment is due under the agreement, County will offset said delinquent taxes by the amount of the payment due under the agreement and will continue to do so until the delinquency is satisfied, pursuant to K.S.A. 79-2012.