

EMERGENCY MEDICAL SERVICE SUPPLIES AGREEMENT

This Emergency Medical Service Supplies Agreement (herein "Agreement") is made and entered into by and between the City of Cedar Hill, Texas, a Texas home rule municipal corporation (herein "City"), and Bound Tree Medical, LLC, an Ohio limited liability company (herein "Bound Tree") and shall be effective as of the date of execution set forth herein.

WITNESSETH

WHEREAS, Bound Tree is a distributor of medical and pharmaceutical supplies; and

WHEREAS, the City operates an emergency medical service ("EMS") by and through its Fire Department; and

WHEREAS, the City's EMS requires the use of certain medical and pharmaceutical supplies ("medical supplies") to preserve and protect the public health and safety of the City's residents visitors; and

WHEREAS, Bound Tree bid on and was awarded a contract by the City under which Bound Tree agreed to sell medical supplies to the City's EMS for the period of March 1, 2013 through February 28, 2014 (the Original Agreement); and

WHEREAS, the Original Agreement was renewed for each of three optional one-year renewal terms; and

WHEREAS, the final renewal term of the Original Agreement ends on February 28, 2017; and

WHEREAS, the City desires to continue to procure medical supplies, by and through the City's EMS, to preserve and protect the public health and safety of its residents and visitors; and

WHEREAS, Bound Tree desires and agrees to continue supply the City's EMS with medical supplies subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and covenants and conditions herein, the City and Bound Tree agree as follows:

1. Purchase and Sale of Medical Supplies. Bound Tree agrees to sell, and City agrees to purchase, medical supplies for the City's EMS pursuant to all of the terms and conditions of the Contract Documents as defined herein. In exchange for the City's use of Bound Tree as the City's medical supplies vendor, when said medical supplies can be delivered timely, Bound Tree will provide requested medical supplies to the City's EMS at the agreed-upon price and in the agreed-upon quantities as set forth in the Contract Documents.

2. Contract Documents. The Contract Documents referenced in and made part of this Agreement shall consist of the following:

- a. this Agreement
- b. the Invitation to Bid & Bid Specifications
- c. Bound Tree's Bid Quotation
- d. any written modifications or change orders agreed to by the City and Bound Tree.

The Invitation to Bid and Bid Specifications along with Bound Tree's Bid Quotation are attached hereto as Exhibit A and incorporated herein for all purposes.

3. Term. The term of this Agreement shall be one year beginning on March 1, 2017 and ending on February 28, 2018. This Agreement includes three (3) optional one-year renewal terms. The City shall have the right to renew this Agreement for any or all of the optional renewal terms under the same terms and conditions of this Agreement.

4. Termination. Notwithstanding the provisions in Section 3 above, the City may terminate this Agreement for any reason or no reason at all by providing Bound Tree with ninety (90) days prior written notice.

5. Payments. The City agrees to pay Bound Tree per the terms of the Contract Documents for orders from and delivered to the City's EMS.

6. Delivery. The City and Bound Tree agree that the City is not obligated to order a specific quantity of medical supplies and cannot supply Bound Tree with a forecast of the volume of medical supplies that the City's EMS will order. The City will, upon reasonable request from Bound Tree, and without the City binding itself in any way, provide short-term estimates of needed medical supplies to Bound Tree.

7. Acceptance of Medical Supplies. Acceptance or approval by the City or the City's EMS of any medical supplies under this Agreement shall not in any way relieve Bound Tree of responsibility for the any technical accuracy or quality of the fulfilment of any order for medical supplies from the City's EMS. The City's review, approval or acceptance of or payment for any medical supplies shall not be construed to operate as a waiver of any of the City's rights under this Agreement or any cause of action arising out of the performance or non-performance of this Agreement.

8. Indemnification. Bound Tree shall indemnify, save, and hold harmless the City and the City's EMS, its officials, officers, agents and employees with respect to any claims or demands, actions, damages, costs and expenses, including, without limitation, attorneys' fees and costs of litigation, arising from the death or injury of any person whomsoever, or any loss,

damage or destruction of any property whatsoever, resulting directly or indirectly from any intentional, negligent or grossly negligent act, error or omission of the Bound Tree, its agents, servants, employees or other persons acting on Bound Tree's behalf and arising from or related to Bound Tree's performance under this Agreement. This indemnity shall not be terminated or otherwise affected by reason of the termination or expiration of this Agreement.

9. Relationship of Parties. Bound Tree will use its own means and manner to perform its obligations under this Agreement and shall be deemed an independent contractor of the City. In no event shall this Agreement or any performance thereunder be deemed or interpreted as creating a principal-agent or joint venture relationship between the parties hereto. Neither party shall hold itself out as an agent of the other party, nor shall a party incur any indebtedness or obligations in the name of, or which shall be binding upon, the other party.

10. Notices. All notices and communications under this Agreement to be mailed or delivered to the City shall be sent to the address of the City EMS as follows, unless and until Bound Tree is otherwise notified:

EMS Chief
Cedar Hill Fire Department
1212 W. Belt Line Rd.
Cedar Hill, Texas 75104

All notices and communications under this Agreement to be mailed or delivered to Bound Tree shall be sent to the address of the Bound Tree as follows, unless and until the City is otherwise notified:

Bound Tree Medical, LLC
P.O. Box 8023
5000 Tuttle Crossing Blvd.
Dublin, OH 43016

11. Assignment. This Agreement shall not be assignable in whole or in part without the written consent of the City.

12. Dispute Resolution. If a dispute arises between the parties relating to this Agreement, the parties agree to use the following procedure prior to either party pursuing other available remedies:

a. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

b. If, within thirty (30) days after such meeting, the parties have not succeeded in

negotiating a resolution of the dispute, they will appoint a mutually-acceptable mediator and agree to attend one, half day mediation with said mediator in an attempt to resolve the dispute. The parties shall share the fees of the mediator equally.

13. **WAIVER OF RIGHT TO TRIAL BY JURY.** BOUND TREE AND CITY AGREE THAT ALL DISPUTES ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY AND ALL REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, IF ANY, WHICH CANNOT BE RESOLVED THROUGH INFORMAL NEGOTIATIONS OR MEDIATION AS SET FORTH IN SECTION 12 ABOVE, SHALL BE RESOLVED BY WAY OF A TRIAL BEFORE A JUDGE OF A COURT OF COMPETENT JURISDICTION. BOUND TREE AND CITY EACH HEREBY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY. BOUND TREE AND CITY EACH HEREBY ACKNOWLEDGE AND REPRESENT THAT THEY HAVE KNOWINGLY AND VOLUNTARILY WAIVED THEIR RESPECTIVE RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY LEGAL MATTER OR DISPUTE ARISING FROM OR RELATED TO THIS AGREEMENT.

14. Severability. Should any word, phrase, sentence, paragraph or other provision or portion of this Agreement be construed to be unlawful or unenforceable by a court of competent jurisdiction, such circumstance shall not affect the validity of the remaining portions of this Agreement which shall remain in full force and effect.

15. Binding Effect. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

16. Governing Law and Venue. This Agreement shall be governed by, and its provisions construed in accordance with, the laws of the State of Texas. Venue for any action arising from or related to this Agreement shall be the State District Courts of Dallas County, Texas.

17. Amendment and Waiver. No amendment or waiver of any provision of this Agreement, and no consent to any departure herefrom, shall be effective or binding unless and until set forth in a writing signed by each party, and then any such waiver or consent shall be effective only in a specific instance and for the specific purpose for which it was given. No notice or any other communication given by one party to the other party shall be construed to be or constitute an approval or ratification by the other party of any matter contained or referred to in such notice, unless the same be consented to by the other party in writing.

18. Entire Agreement. This Agreement constitutes the entire agreement between the

parties, and there exist no other written or oral understandings, agreements or assurances with respect to any matters except as set forth herein. Unless expressly stated, this Agreement confers no rights to or upon any person or entity that is not a party hereto.

19. Legal Construction. Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. The parties agree that this Agreement or any provision of this Agreement shall not be construed in favor of or against any party on the basis that the party did or did not authorize this Agreement or any provision hereto. This Agreement and all of the terms and provisions herein shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

EXECUTED this 24 day of January, 2017.

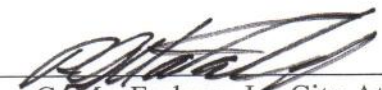
CITY OF CEDAR HILL, TEXAS:

By: 
Rob Franke, Mayor

ATTEST:


Belinda Berg, City Secretary

APPROVED AS TO FORM:


Ron G. MacFarlane, Jr., City Attorney

BOUND TREE MEDICAL, LLC:

By: 
Mark Dougherty, Chief Financial Officer