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December 21, 2012

REPORT TO THE HONORABLE MAYOR AND CITY COUNCIL

CITY EMERGENCY MEDICAL SERVICES CONTRACT REQUEST FOR PROPOSALS  
STATUS

### INTRODUCTION

The City of San Diego's current contract for Emergency Medical Services (EMS) is set to expire on June 30, 2013.<sup>1</sup> In the past year, the City has developed a request for proposals (RFP) that was approved by the State and County authorities on October 5, 2012. However, City staff has delayed publishing the RFP in order to consider developing a new RFP based on the recent passage of a State law which potentially may benefit the City. However, further delay in the releasing of the EMS RFP exposes the City to risk. Therefore, because the City has an RFP completed and approved by all necessary authorities, this RFP should be published as soon as possible so that the City will not violate its contractual obligations to the Local EMS Agency.

### BACKGROUND

The County of San Diego gave the City the right to contract for EMS within the boundaries of the City in 1997.<sup>2</sup> That same year, San Diego Medical Services Enterprise (SDMSE), a public/private partnership between the City and Rural/Metro Corporation (RM), entered into a five-year contract to provide ambulance services to the City.<sup>3</sup> This agreement was extended to 2005, and then to 2008.<sup>4</sup> Two bridge agreements extended the contract until 2010.<sup>5</sup> After an RFP was issued in 2010, SDMSE was awarded a contract that would have kept them as the City's EMS provider until 2015.<sup>6</sup>

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<sup>1</sup> The City's current EMS provider is Rural/Metro Corporation.

<sup>2</sup> See County of San Diego, Department of Health Services Emergency Medical Services EMT-Paramedic Services Agreement (1997). The County has the authority to grant the City an "Exclusive Operating Area" in which the City must provide emergency medical services per state law. Cal. Health & Safety Code § 1797.201, Relevant Notes of Decisions.

<sup>3</sup> Operating Memorandum #1 to the emergency medical services agreement (1997). This contract was the result of an RFP which was required by state law. Cal. Health & Safety Code § 1797.224.

<sup>4</sup> A good summary of these extensions is found in the "Recitals" section of the 2004 EMS Agreement between San Diego Medical Services Enterprise and the City of San Diego.

<sup>5</sup> See Amendment No. 1 to the Agreement Between the City of San Diego and San Diego Medical Services Enterprise (2010).

<sup>6</sup> Emergency Medical Services Agreement between San Diego Medical Services Enterprise and the City of San Diego (2010).

However, soon after the 2010 agreement was signed, the City and RM decided to dissolve SDMSE.<sup>7</sup> This decision was based on several legal and financial concerns that arose between the City and RM regarding the parties' relationship within SDMSE.<sup>8</sup> The City and RM entered into a two-year long sole-source contract (Current Agreement) in order to ensure uninterrupted ambulance service within the City.<sup>9</sup> The Current Agreement expires on June 30, 2013.<sup>10</sup>

## **I. THE CITY'S OBLIGATIONS REGARDING EMERGENCY MEDICAL SERVICES AND COMPETITIVE BIDDING**

### **A. State Requirements**

The State EMS Authority is responsible for overseeing EMS within California.<sup>11</sup> Much of that authority is delegated to the County of San Diego, acting as a Local EMS Agency.<sup>12</sup> The Local EMS Agency is tasked with ensuring that EMS contracts within exclusive operating areas, such as the EMS area operated by the City, are competitively bid.<sup>13</sup> These exclusive operating areas are to be bid "at periodic intervals" determined by an agreement between the City and the Local EMS Agency.<sup>14</sup>

### **B. County Requirements**

The 1997 agreement between the City and the County clarifies the parties' roles and responsibilities with regards to the City's EMS system.<sup>15</sup> Under this agreement, the City has the obligation to provide EMS services within its jurisdiction and the City may contract for those services when needed.<sup>16</sup> Should the City's ability to meet the requirements of this agreement be "adversely affected," the City has the responsibility to immediately notify the County.<sup>17</sup> The City is also required to "take immediate corrective action" whenever it is unable to fulfill its responsibilities under this agreement.<sup>18</sup>

Additionally, the County's role as the Local EMS Agency means that it must approve contracts regarding the City's overall provision of EMS within the City's exclusive operating area.<sup>19</sup> This need for approval would extend to any amendments to the Current Agreement.

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<sup>7</sup> See "Recitals," 2011 Emergency Medical Services Agreement between Rural/Metro of San Diego, Inc. and the City of San Diego (2011).

<sup>8</sup> A summary of the problems that arose can be found in a June 8, 2011, Report to the Honorable Mayor and City Council from the City Attorney's Office (2011 Report) entitled "Legal Issues Associated with Interim Emergency Medical Services Agreement with Rural/Metro Corporation."

<sup>9</sup> See *Id.*, § 2.1.

<sup>10</sup> *Id.*

<sup>11</sup> Cal. Health & Safety Code §§ 1797.100-1797.118.

<sup>12</sup> Cal. Health & Safety Code §§ 1797.200-1797.226.

<sup>13</sup> Cal. Health & Safety Code § 1797.224.

<sup>14</sup> *Id.* In some cases, state officials have interpreted this to mean every ten years. See the 2011 Report, fn 4.

<sup>15</sup> County of San Diego, Department of Health Services Emergency Medical Services EMT-Paramedic Services Agreement (1997).

<sup>16</sup> *Id.* at III.B "Responsibilities of the City."

<sup>17</sup> *Id.* at III.B.15.

<sup>18</sup> *Id.* at III.B.22.

<sup>19</sup> Cal. Health & Safety Code §§ 1797.201, 1797.224.

### **C. City Requirements**

The Current Agreement for EMS services within the City will expire on June 30, 2013.<sup>20</sup> Despite the fact that the Current Agreement may be amended by written consent of the parties,<sup>21</sup> there are no explicit provisions in that contract for an extended term.<sup>22</sup> The Current Agreement explains that it is intended to give the City time to issue a new RFP and have the provider in place at the time of its expiration in 2013.<sup>23</sup>

The Current Agreement is a sole source contract under the San Diego Municipal Code<sup>24</sup> because there was insufficient time to conduct a competitive bid process after the 2010 agreement had dissolved.<sup>25</sup> Any extension of the Current Agreement would require new analysis as to whether the legal requirements for a sole source justification are met.

In summary, the City has an obligation from both the State and the County to provide EMS within its jurisdiction. Under the 1997 agreement between the City and the County, the County has the right to know when the City's ability to provide EMS would be adversely affected. Further, the Current Agreement was made with the explicit understanding that the City would have a new contract awarded and in place by the time of its expiration.

## **II. THE REQUESTS FOR PROPOSALS**

Over the past two years, City staff developed an RFP for EMS that has been approved by both the County and the State and is ready for publication. Nonetheless, staff has delayed publishing the RFP and instead has begun developing a new RFP that may allow the City to take advantage of federal funds set aside for certain Medi-Cal service providers. This new RFP poses a challenge to the City because it will require new State and County approvals. These changes will significantly delay the RFP publication date.

### **A. The Approved Request for Proposals**

The City currently has a State and County approved RFP for ambulance services. This RFP was been developed throughout the term of the Current Agreement. In this RFP, the City asks providers to provide EMS in a manner similar to past City contracts and the current City EMS system.

As noted above, state law requires that RFP's for EMS be approved by State and County EMS agencies.<sup>26</sup> The City submitted its draft RFP in late spring of 2012 to the State and County, and approvals were granted on October 5, 2012.<sup>27</sup> This approved RFP has not yet been published.

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<sup>20</sup> 2011 Emergency Medical Services Agreement between Rural/Metro of San Diego, Inc. and The City of San Diego (2011), ¶ 2.1 "Term of Agreement."

<sup>21</sup> *Id.* at ¶ 15.2 "Amendments." Note that any amendments may need City Council and Mayoral approval prior to their going into effect. *Id.*

<sup>22</sup> *See Id.* at ¶ 2.1 "Term of Agreement."

<sup>23</sup> *Id.*; *see also* the "Recitals" section of the contract for more information as to the intent of the parties.

<sup>24</sup> At the time (2011), the San Diego Municipal Code sections were 22.3037 and 22.3212(e). The numbering of these sections has changed to 22.3016 and 22.3208(e), respectively.

<sup>25</sup> 2011 Report, part II.A.

<sup>26</sup> *See* Cal. Health & Safety Code §§ 1797.201, 1797.224.

<sup>27</sup> Letter from the County of San Diego Health and Human Services Agency to the City of San Diego (Oct 5, 2012).

**B. The New Request for Proposals**

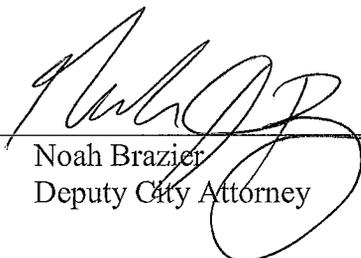
City staff has delayed publishing the RFP while they consider a new RFP based on a recently adopted state law.<sup>28</sup> The State added a new section to the California Welfare and Institutions Code which provides for additional Medi-Cal reimbursements to Medi-Cal emergency ground transport providers.<sup>29</sup> These reimbursements allow Medi-Cal ground transport providers to recover funds equal to the full cost for transporting Medi-Cal patients instead of the standard Medi-Cal allotment.<sup>30</sup> The additional reimbursements are only available to agencies that fulfill three conditions.<sup>31</sup> First, the provider must furnish "ground emergency medical transport services to Medi-Cal beneficiaries."<sup>32</sup> Second, they must be "enrolled as a Medi-Care provider for the period claimed."<sup>33</sup> Finally, the provider must be operated by a state, city, county, or other approved government agency.<sup>34</sup> To date, it is unclear whether the City would actually benefit from these changes to the Welfare and Institutions Code. Moreover, the State has not yet explained exactly which costs will be recoverable.

This new RFP would require a significant amount of review and development within the City. Additionally, both the County and the State would have to approve this new RFP. Because of the complexity of this new RFP, and the necessity for State and County approvals, this new RFP would not be ready for publication and award by the date the Current Agreement expires.

**CONCLUSION**

The City must publish the approved EMS RFP because the existing EMS contract expires on June 30, 2013 and to meet its contractual obligations as an EMS provider. By so doing, the study of other options for future EMS contracts could continue while upholding the City's obligation to provide EMS for its citizens.

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<sup>28</sup> Cal. Welfare & Institutions Code § 14105.94.

<sup>29</sup> Cal. Welfare & Institutions Code § 14105.94.

<sup>30</sup> Cal. Welfare & Institutions Code § 14105.94(c).

<sup>31</sup> Cal. Welfare & Institutions Code § 14105.94(b).

<sup>32</sup> Cal. Welfare & Institutions Code § 14105.94(b)(1).

<sup>33</sup> Cal. Welfare & Institutions Code § 14105.94(b)(2).

<sup>34</sup> Cal. Welfare & Institutions Code § 14105.94(b)(3). The other allowed government agencies are listed in this section, but are not relevant to our discussion.