

THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: November 29, 2006 REPORT NO: 06-183

ATTENTION: Council President and City Council
Docket of December 4, 2006

SUBJECT: Amendment to San Diego Medical Services Enterprise [SDMSE]
Operating Agreement Regarding Expiration Language

REFERENCE: **THIRD AMENDED AND RESTATED OPERATING AGREEMENT
(STRIKEOUT VERSION)**

REQUESTED ACTION:

Authorize the Mayor to amend the Third Amended and Restated Operating Agreement of San Diego Medical Services Enterprise LLC [Operating Agreement] to allow for the continued existence of San Diego Medical Services Enterprise LLC ["SDMSE" or the "LLC"] beyond the term of Third Amended and Restated Emergency Medical Services Agreement [EMS Agreement] between SDMSE and the City.

STAFF RECOMMENDATION:

Consistent with the action taken by the SDMSE Board of Managers, extend the term of the SDMSE until the fifth anniversary of the date on which the LLC ceases to provide services to any third party, unless extended by the mutual written agreement of the members.

SUMMARY/BACKGROUND:

SDMSE is a limited liability company whose members are the City and Rural/Metro Corporation, a private provider of EMS Services. In partnership with San Diego City Firefighters Local 145, San Diego Fire Rescue Department, SDMSE was awarded the City of San Diego's EMS contract in 1997. The City has twice extended SDMSE's contract in 2002 and 2005, but is required to re-bid the contract in 2008.

The current Operating Agreement was originally drafted in 1997 and, as renewed in 2005, provides that the SDMSE shall wind down and terminate within six months of June 30, 2008, which is also the termination date of the final EMS Agreement extension between SDMSE and the City. This termination date raises two potential concerns in terms of protecting the interests of the City and SDMSE.

First, the mandatory termination of SDMSE creates potential liability exposure for the City. If SDMSE were to cease to exist in 2008, the City could face direct liability for the activities of the LLC. Specifically, activities and operations of SDMSE are subject to general, professional, and contractual liability claims for up to four years from the time the liability accrues. If SDMSE were to terminate before that period of time runs, the City loses the protections that exist because of the legally separate status of SDMSE; claims against the LLC could be brought against the City itself. Accordingly, the recommendation from the Board of Managers is that the term of the

LLC be changed so that it expires five years after SDMSE ceases to provide services to any third party. This allows for the LLC to exist for a period of time beyond the limitations period of any claim that may be asserted against SDMSE.

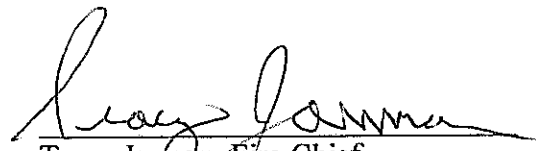
Second, the Operating Agreement provides that the LLC may enter into other business and provide services in other jurisdictions within San Diego County but outside the City. The mandatory termination date in the Operating Agreement may inhibit the ability of SDMSE to engage in this other business if the LLC is unable to contract for EMS services that extend beyond 2008. Specifically, the San Diego County Service Area 17 EMS contract (CSA 17) is up for bid. SDMSE currently services this contract, but may be unable to re-bid for this business because the contract extends beyond June 30, 2008.


From its inception, SDMSE was created to provide City EMS services as well as other EMS related business throughout the County, a model has been successful for both the City and SDMSE. It makes good business sense for the City to ensure that the LLC is allowed to continue to pursue these contracts, which produce revenue for the City, effectively subsidizing the cost of providing City EMS services.

In addition to amending the termination provision of the Operating Agreement, the proposed amendment includes additional language to protect the City in the event that the City chooses to withdraw from the LLC for any reason. It allows the City to withdraw from the LLC without the consent of Rural/Metro upon written notice of this intent. While there is no particular reason why this would be advantageous to the City, the amendment would offer the City far greater flexibility to withdraw from the LLC.

FISCAL CONSIDERATIONS: None

PREVIOUS COUNCIL and/or COMMITTEE ACTION: The Council authorized the City Manager to enter into the Third Amended and Restated Operating Agreement, on file with the City Clerk as Document No. RR.299840.1, on November 13, 2004 and approved the Operating Agreement, on file with the City Clerk as Document No. RR.299840.1, on November 30, 2004.


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