

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: August 31, 2021
Public Hearing Date: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Mario M. D'Agostino, Fire Chief, 915-212-5600

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: No. 2: Set the Standard for a Safe and Secure City

SUBGOAL: Improve Patient Care by Evaluating Trends in Emergency Medical Care and Promoting Community Wellness

SUBJECT:

That the City Manager be authorized to sign an Independent Contractor Agreement between the City of El Paso, Texas and Dr. Baker, for the latter to provide Medical Director services to the emergency medical staff of the City of El Paso, for the monthly amount of \$6,000.00 from September 1, 2021 through August 31, 2023, for a total amount of \$144,000, with the City Manager being authorized to administratively extend the Agreement for an additional twelve-month period.

BACKGROUND / DISCUSSION:

The contract is for medical direction for El Paso Fire Department's advanced and basic life support services. This is required by the Texas Health and Safety Code Title 9, Subtitle B, Chapter 773 Emergency Medical Services, Subchapter A, Section 773.007.

PRIOR COUNCIL ACTION:

Independent Contractor Agreement was executed on September 4, 2018 between City of El Paso, Texas and Berumen, PLLC, to provide medical consulting, training and advisory services to the El Paso Fire Department.

AMOUNT AND SOURCE OF FUNDING:

Amount: \$6,000 per month
Dept: 322 Division: 22070 General Fund: 1000 Program: P2212 Account 521120 – Health Care Providers Services

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Fire Department
SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



RESOLUTION

WHEREAS, the City of El Paso Public Safety Departments provide basic and advanced life support service for the citizens of El Paso; and

WHEREAS, the Texas Health and Safety Code Section 773.007 states that the provision of advanced life support must be under medical supervision and a licensed physician's control, and that the provision of basic life support may be under medical supervision and a licensed physician's control; and

WHEREAS, Dr. Russell A. Baker (“Dr. Baker”), is a physician capable of performing the duties of the Medical Director as governed by Texas Administrative Code, Title 22, Part 9, Chapter 197 Rule 197.3 "Off-line Medical Director"; and

WHEREAS, Dr. Baker has been appointed as the Medical Director by the Fire Chief of the El Paso Fire Department; and

WHEREAS, the City Council also seeks to receive Medical Director services from Dr. Baker from September 1, 2021 through August 31, 2023.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF EL PASO:

THAT the City Manager be authorized to sign an Independent Contractor Agreement (the “Agreement”) between the City of El Paso, Texas (“City of El Paso”) and Dr. Baker, for

the latter to provide Medical Director services to the emergency medical staff of the City of El Paso, for the monthly amount of \$6000.00 from September 1, 2021 through August 31, 2023, for a total amount of ONE HUNDRED FORTY-FOUR THOUSAND DOLLARS AND NO/100 (\$144,000), with the City Manager being authorized to administratively extend the Agreement for an additional twelve-month period, for the monthly amount of \$6000.00 from September 1, 2023 through August 31, 2024, for a total amount of SEVENTY-TWO THOUSAND DOLLARS AND NO/100 (\$72,000).

ADOPTED this ____ day of _____, 2021.


CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Rebecca Estrada Quinn
Assistant City Attorney

APPROVED AS TO CONTENT:



Mario M. D'Agostino, Fire Chief
El Paso Fire Department

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is made this ____ of August, 2021, between the **CITY OF EL PASO**, (the "City") and Dr. Russell A. Baker (the "Contractor".)

WITNESSETH:

WHEREAS, the El Paso Fire Department provides basic and advanced life support service for the citizens of El Paso; and

WHEREAS, the state-of-the art delivery of basic and advanced life support by Texas State Certified Paramedics and Emergency Medical Technicians (EMTs) requires 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; and

WHEREAS, Texas Health and Safety Code Title 9, Subtitle B, Chapter 773, Emergency Medical Services, Subchapter A, Section 773.007 states that the provision of advanced life support must be under medical supervision and a licensed physician's control, and that the provision of basic life support may be under medical supervision and a licensed physician's control; and

WHEREAS, Contractor is a physician capable of performing the duties of the Medical Director as governed by Texas Administrative Code, Title 22, Part 9, Chapter 197 Rule 197.3 "Off-line Medical Director."; and

WHEREAS, Contractor has been appointed as the Medical Director by the Fire Chief of the El Paso Fire Department; and

WHEREAS, it is necessary and appropriate for the City to enter into this Agreement with Contractor to set the compensation and establish such other necessary and appropriate provisions for the Contractor's services during the term of this Agreement.

NOW, THEREFORE, the City and Contractor do hereby mutually agree as follows:

1. DUTIES AND RESPONSIBILITIES OF CONTRACTOR: Contractor will provide medical consulting, training and advisory services to the City of El Paso Public Safety Departments and shall be directly responsible to the Chief of the El Paso Fire Department for the performance of services specified herein in the terms of this contract.

2. TERM OF CONTRACT: The term of this Agreement shall be valid commencing September 1, 2021, and ending on August 31, 2023, with the City Manager having the authority to administratively extend the Agreement for an additional twelve-month period without the need to seek Council approval, by giving written notice to the Contractor not less than thirty (30) days prior to the date upon which this Agreement would otherwise terminate. Written notice shall be provided as set forth in this contract.

3. SCOPE OF SERVICES: Contractor shall provide the services outlined in the attached scope of duties and job specification. Contractor shall coordinate at reasonable times with the Deputy Chief of the El Paso Fire Department Community Health Division on all issues relating to the provision of medical services being provided by the City of El Paso.

4. COMPENSATION AND METHOD OF PAYMENT: Contractor shall be compensated in the amount of SIX THOUSAND DOLLARS AND NO/100 (\$6,000.00) per month, during the term of the Agreement, including any extension. The combined total compensation amount for the initial two-year term of this Agreement, excluding any extension, shall not exceed a total of ONE HUNDRED AND FORTY-FOUR THOUSAND DOLLARS AND NO/100 (\$144,000). If the Agreement is extended, Contractor's total compensation amount for the extension period term shall not exceed a total of SEVENTY-TWO THOUSAND DOLLARS AND NO/100 (\$72,000). This is a part-time position and is not exclusive. The City will not pay any fringe benefits.

Contractor understands that as an independent contractor, taxes will not be withheld from the Contractor's payment, and consequently Contractor assumes all liability for payment of taxes on his earnings.

5. LOCATION OF PERFORMANCE: The place where such services are to be performed is the City of El Paso, State of Texas, or as otherwise necessary in conjunction with the performance of Contractor's statutorily required duties.

6. OWNERSHIP OF DOCUMENTS: All documents developed by Contractor under this Agreement shall be delivered to the City by said Contractor upon completion of the services required pursuant to paragraph 3 hereof and shall become the property of the City, without restriction or limitation on its use. Contractor agrees that all documents maintained and generated pursuant to this contractual relationship between the City and Contractor shall be subject to all provisions of the Texas Public Records Act. It is further understood by and between the parties that any information, writings, maps, contract documents, reports or any other matter whatsoever which is given by the City to Contractor pursuant to this Agreement shall at all times remain the property of the City and shall not be used by Contractor for any other purposes whatsoever without the written consent of the City.

7. AUDIT RIGHTS: The City reserves the right to audit the records of Contractor, relating to this Agreement, at any time during the performance of this Agreement and for a period of one (1) year after final payment is made under this Agreement. Such audit shall be conducted at such time and in such matter so as to cause the least amount of disruption to Contractor's normal business activities.

8. INDEPENDENT CONTRACTOR RELATIONSHIP: Nothing herein shall be construed as creating the relationship of employer and employee between the parties. Neither the

City nor its agent the El Paso Fire Department shall be subject to any obligations or liabilities of the Contractor incurred in the performance of this contract, unless otherwise herein authorized.

9. PROOF OF LAWFUL WORK STATUS: Contractor agrees to comply with the Immigration Reform and Control Act. The parties agree that all necessary forms or documents including Form I-9 for the purpose of providing proof of United States citizenship of Contractor's lawful residency and work status will be provided to the City at the time that this Agreement is executed.

10. INSURANCE: Contractor agrees to carry his own professional liability insurance and to provide proof of such insurance to the El Paso Fire Department prior to commencement of his services as Medical Director. The City agrees to provide up to TWELVE THOUSAND DOLLARS AND NO/100 DOLLARS (\$12,000) per year towards such insurance coverage. Contractor agrees to invoice the City for such amount yearly. The policy shall list the City of El Paso, as an additional insured. Said professional liability insurance policy limits shall be in accordance with the accepted standards of the local medical community, but in no event, less than in an amount of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) combined single limit for injury or death to one or more persons, whichever amount is greater. Contractor will be responsible for the tail end coverage.

Contractor shall maintain said insurance with a solvent insurance company authorized to do business in Texas. Contractor shall file a copy of the policy binder and a certificate of insurance with the City within ten (10) days of execution of this Agreement. Such policy or certificate shall provide that the insurance cannot be canceled and that the amount of coverage cannot be decreased without thirty (30) days prior written notice to the City.

11. INDEMNIFICATION: As a condition of the granting of this Agreement, the Contractor will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR CONTRACTOR'S SERVICES AS MEDICAL DIRECTOR ONLY TO THE EXTENT COVERED BY CONTRACTOR'S PROFESSIONAL LIABILITY INSURANCE POLICY. Without modifying the Contractor's obligation to preserve and assert any defense available to the City, the City will promptly forward to the Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. The Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause.

12. LAW GOVERNING CONTRACT: For purposes of determining the place of the Agreement and the law governing the same, it is agreed that this Agreement is entered into in the City of El Paso, State of Texas, and shall be governed by the laws of the State of Texas.

13. TERMINATION: The City retains the right to terminate this Agreement at any time prior to the completion of the services required pursuant to this Agreement without penalty to

City. In that event, notice of termination of this Agreement shall be in writing to Contractor, who shall be paid for those services performed prior to the date of its receipt of the notice of termination. In no case, however, will City pay Contractor an amount in excess of the total sum provided by this Agreement. It is hereby understood by and between the City and Contractor that any payment made herein to Contractor shall be made only if said Contractor is not in default under the terms of this Agreement. If Contractor is in default, the City shall first deliver written notice of such default to Contractor. Contractor shall have a period of thirty (30) days within which to cure such default or if such cure cannot be completed within such period, Contractor shall have a reasonable period within which to commence and complete such cure before Contractor is determined to be in default. Contractor may terminate this agreement, without cause, within thirty (30) days prior written notice.

14. CONTINGENCY CLAUSE: Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and for change in regulations. In such event, Contractor shall be entitled to terminate this Agreement immediately upon written notice to the City.

15. NOTICES: Notices required herein shall be either hand-delivered or mailed, postage pre-paid, to the following addresses:

CITY: City of El Paso
El Paso Fire Department
Attn: Chief Mario M. D'Agostino
416 N. Stanton, 2nd Floor
El Paso, Texas 79901

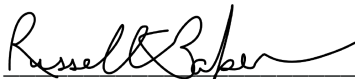
CONTRACTOR: Dr. Russell A. Baker
4801 Alberta, B3200
El Paso, Texas 79905

16. ENTIRE AGREEMENT: This Agreement constitutes and expresses entire agreement between the parties in reference to the services of the Contractor for the City of El Paso, and to any of the matters herein provided for, or hereinbefore discussed or mentioned in reference to the hiring of such services, all promises, representations and understandings relative thereto herein being merged.

APPROVED this _____ day of _____, 2021.


CITY OF EL PASO

Tomás González
City Manager



Dr. Russell A. Baker

APPROVED AS TO FORM:



Rebecca Estrada Quinn
Assistant City Attorney

APPROVED AS TO CONTENT:



Mario M. D'Agostino, Fire Chief
El Paso Fire Department

Attachment "A"

Scope of Services

Contractor shall be a licensed physician that will perform the duties as Medical Director for the City of El Paso Public Safety Departments. The contractor will be responsible for clinical oversight of pre-hospital treatment rendered by the City of El Paso Emergency Medical Services System personnel. The Medical Director is responsible for all aspects of the operation of an EMS system concerning provision of medical care.

TYPICAL DUTIES:

The Medical Director's responsibilities shall include:

- a) Assist Professional Development Program of EPFD on all training activities and programs for standards of care;
- b) Provides Direct EMS classroom and skills instruction;
- c) Provides direction for fire service medical issues;
- d) Provides medical consultation to Medical Deputy Chief;
- e) Provides on-scene medical oversight and patient care on select incidents;
- f) Credentialing of certified and licensed emergency medical technicians and nurses employed by the El Paso Public Safety Departments, as well as the responsibility to recommend suspension or local decertification of any El Paso Public Safety Personnel and report all incidents to the Texas Department of State Health Services;
- g) Develop and assist in the formulation of policies and procedures on medical services provided by El Paso Fire Department;
- h) Provide medical oversight and expertise to continuous quality improvement (CQI) programs by reviewing and analyzing EMS effectiveness, system trends, and needs in an effort to ensure EMS system excellence; Conduct system audits and quality assurance of programs. Develop, implement, and monitor management of patient care, incidents of complaints, and deviations from established protocols;
- i) Participate in call reviews with first responders, nurse/educators, fire fighter/paramedics, and firefighter/EMT's; assist in problem solving in field clinical decision making;
- j) Assists Medical Deputy Chief with decisions involving risk assessment, post-exposure prophylaxis and treatment of occupational infectious disease exposures; assists City of El Paso's Risk Management or EPFD Safety Officer with medical and health components of OSHA Respiratory Protection Standard;
- k) Provides input to EPFD Health and Safety Committee with regard to firefighter safety and health issues;
- l) Provides guidance and information to the EPFD Hazardous Materials Response Team and Special Operations Division on issues of environmental and clinical toxicology in administration, planning, training and operations;
- m) Serves as a liaison with medical directors and administrators of the City Health Department, EMS providers, base hospitals, regional trauma centers, paramedic receiving hospitals, acute care facilities, paramedic training institutions and professional medical groups;
- n) Attends EMS administrative and oversight committee meetings;
- o) Serves as a liaison with various local, regional, state and national medical associations regarding emergency medical service;

- p) Assists EPFD 911 Communications Division/911 District on Emergency Medical Dispatch(EMD) training, education and CQI;
- q) Liaison with EPFD 911 Communications Division/911 District administration on issues of medical dispatch strategies and pre-arrival instructions; and
- r) Assists the EPFD Public Information Officer (PIO) as a technical specialist on emergency services medical and health issues.

The EPFD Medical Director must meet requirements of the Texas Administrative Code, Title 22, Part 22, Part 9, Chapter 197 Rule 197.3 "Off-line Medical Director" in addition to all requirements listed above.