

TOWN OF WEST SENECA



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TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

TO: The Honorable Town Board

FROM: John J. Fenz, Esq.
Town Attorney

DATE: July 23, 2015

RE: Rural Metro Medical Services
Renewal of Ambulance Service Agreement

In August 2012 the Town of West Seneca (the "Town") entered into an agreement with LaSalle Ambulance, Inc. ("Rural Metro") for emergency and non-emergency ambulance services to the residents of the Town. The term of the Agreement was for two (2) years, also providing for two (2) – one (1) year renewals upon written consent of both parties.

Please be advised that the Town has received written consent from Rural Metro to extend the Agreement for the two (2) – one (1) year renewals.

Kindly adopt a resolution authorizing the extension of the Rural Metro contract to July 30, 2016.

JUL 27 2015

John Fenz

From: Jay Smith [Jay.Smith@rmetro.com]
Sent: Monday, June 29, 2015 10:13 PM
To: John Fenz
Subject: Extension
Attachments: TO West Seneca Contract 2012.pdf; TO Cheektowaga Contract 2013 Extension.pdf; TO Evans contract 2015 extension.pdf; TO Cheektowaga Contract 2011 Extension.pdf

Mr. Fenz,

Rural/Metro Medical services desires to extend our agreement for the term of August 1, 2014 through July 31, 2015 according to section 14 of our agreement Term of Agreement and Renewal Provisions.

Please also accept this request as our desire to also extend the agreement from August 1, 2015 through July 31, 2016 as stipulated. We are honored to serve the Town and your residents.

I have attached our current agreement, the extension agreement between Rural/Metro and the Town of Cheektowaga for use as an example of a similar arrangement and the resolution from the Town of Evans for a similar arrangement we have with them.

Thank you,

Jay Smith
Regional Director
Rural/Metro Medical Services
481 William L. Gaiter Pkwy.
Buffalo, NY 14215
(716) 818-0678
Jay.smith@rmetro.com



This communication may contain confidential and/or proprietary information and may not be disclosed to anyone other than the intended addressee. Any other disclosure is strictly prohibited by law. If you are not the intended addressee, you have received this communication in error. Please notify the sender immediately and destroy the communication including all content and any attachments. Thank you.

**EMERGENCY AND NON-EMERGENCY
AMBULANCE TRANSPORTATION SERVICES
AGREEMENT**

This Agreement for Emergency and Non-Emergency Ambulance Transportation Services (the "Agreement") is made and entered into by and between LaSalle Ambulance, Inc. and Towns Ambulance Service, Inc. both New York corporations, a/k/a Rural/Metro Medical Services ("Rural/Metro") and the Town of West Seneca ("Town of West Seneca"), a New York municipality, effective August 1, 2012 (the "Effective Date").

RECITALS:

- A. Rural/Metro is a provider of certain emergency and non-emergency ambulance transportation and related services.
- B. The Town of West Seneca desires to contract with Rural/Metro to provide emergency and non-emergency ambulance transportation and related services to its citizens.
- C. Rural/Metro desires to provide the Town of West Seneca with such services and has the necessary equipment, training, expertise, professional certifications and licenses to do so.

NOW THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Provision of Services. Rural/Metro agrees to provide Customer on an exclusive basis with ambulance transportation services in accordance with the description and definitions the parties have mutually agreed upon and detailed in Exhibit A and in accordance with the terms and conditions set forth in this Agreement.
- 2. Certifications and Licenses. Each party shall maintain all certifications and licenses as required by all Applicable Law to perform its obligations hereunder.
- 3. Qualifications to Participate in Federal and State Healthcare Programs. Both parties represent and warrant that (a) neither it nor any employee, agent, or independent contractor provided under this Agreement is excluded from participation under any Federal Health Care Program for the provision of items or services for which payment may be made under a Federal Health Care Program; (b) neither it nor any employee, agent or independent contractor provided under this Agreement has been convicted of a felony relating to health care fraud as defined under 42 U.S.C. §1320a-7(a)(3); and (c) no final adverse action, as such term is defined under 42 U.S.C. §1320(a)-7(c) has occurred or is pending or threatened against either party or to its knowledge against any employee, agent or independent contractor engaged to provide items or services under this Agreement (collectively "Exclusions/Adverse Actions"). During the term of this Agreement, each party agrees to notify the other party in writing of any Exclusions/Adverse Actions within ten (10) days of learning of any such Exclusions/Adverse Actions and provide the basis of the Exclusions/Adverse Actions. Each party acknowledges that the exclusion of any employee, agent or independent contractor from participation in the Federal Health Care Programs shall result in his or her immediate removal from the performance of duties and

responsibilities for the other party under the terms of this Agreement. Each party acknowledges and agrees that any Exclusions/Adverse Actions of or against it or any employee, agent or independent contractor utilized, directly or indirectly, in the performance of this Agreement may serve as the basis of an immediate termination of this Agreement by the other party. For purposes of this Agreement, a "Federal Health Care Program" shall mean any plan or program providing health care benefits, whether directly through insurance or otherwise, that is funded directly, in whole or part, by the United States Government (other than the Federal Employees Health Benefits Program), or any State health care program and shall include, by way of example, the Medicare and Medicaid programs.

4. Insurance. Rural/Metro shall maintain at all applicable times, at its own expense, the insurance coverage set forth in Exhibit C.
5. Ownership of Records and Confidential Information. In addition to protected health information, as defined in 45 CFR § 164.504, or individually identifiable health information, as defined in 42 U.S.C. § 1320d ("Protected Health Information"), during the course of performing this Agreement, each party may from time to time receive confidential information about the other including but not limited to information about the party's customers, patients, practices, procedures, strategies, organization, financial and other related information. Neither party shall use or disclose any such confidential information for any purpose other than the limited purpose of performing its obligations under this Agreement, without the prior express written permission of the supplying party. All documents and records prepared, maintained, handled or otherwise related to Rural/Metro's performance of services hereunder are and shall be the property of Rural/Metro. Rural/Metro's copyrighted materials and procedures shall be and remain the sole property of Rural/Metro. If a party is served with a subpoena or other legal process concerning confidential information of the other party, that party shall immediately (not more than 48 hours after the receipt) notify the supplying party and shall cooperate with it in any lawful effort to contest the legal validity of such process the supplying party may wish to pursue.
6. Availability of Information. During the term of this Agreement and pursuant to any record retention law or regulation the parties are subject to, each party shall make available upon written request of the other, to the Secretary of the Department of Health and Human Services, or to the Comptroller General of the United States, or of any duly authorized representatives of any government agency, this Agreement and the books, documents and records of the party that are necessary to certify the nature and extent of the costs of this Agreement and/or compliance with the law.
7. Warranties and Representations:
 - a) Rural/Metro warrants and represents (i) that it shall perform its services in accordance with industry standards; (ii) that to the best of its knowledge all goods and services reflected in its billing have been furnished to such patient; and (iii) it shall perform all its obligations and maintain all records and patient information used for the performance of services under this Agreement in compliance with all applicable law including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1601 *et seq.*, as amended, any applicable state Consumer Protection laws, as amended, the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended, and the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d through d-8, as amended ("HIPAA")

and the Health Information Technology for Economic and Clinical Health Act of 2009, 45 CFR Parts 142, 160, 162 and 164 (the "HITECH Act").

b) Each party represents and warrants to the other that (i) it has the right to enter into this Agreement, to grant the rights granted in this Agreement and to perform fully all of the services and obligations contemplated by this Agreement; (ii) all necessary laws, consents, resolutions, and corporate/political actions have duly authorized the execution and performance of this Agreement, and this Agreement constitutes a valid and enforceable obligation of each of the parties; (iii) the person entering into this Agreement is authorized to sign this Agreement on behalf of the party; and (iv) the parties have reviewed this Agreement with their respective legal counsel to the party's satisfaction or voluntarily waived their right to do so. The parties acknowledge that HIPAA and the HITECH Act, and the regulations promulgated thereunder apply to the activities described in this Agreement, and that both parties are "covered entities" as that term is used in HIPAA and the HITECH Act. In that regard, the parties acknowledge and warrant to each other that their respective activities undertaken pursuant to this Agreement shall conform to HIPAA and the HITECH Act no later than the effective date of each such requirement.

c) Facility warrants and represents that (i) all information supplied to and all representations made to Rural/Metro shall be true, accurate and complete and in the event such information or representation(s) made herein become inaccurate or incomplete, Facility will promptly notify Rural/Metro in writing of such occurrence; (ii) it shall perform all its obligations and maintain all records and patient information used for the performance of services under this Agreement in compliance with all applicable law including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1601 *et seq.*, as amended, any applicable state Consumer Protection laws, as amended, the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended, and HIPAA and the HITECH Act. Facility acknowledges that it has received copies of Rural/Metro's Code of Ethics and Business Conduct and Rural/Metro's Anti-Kickback Policy.

8. Response Time Requirements. The standard response time requirements are:

a) HOT Response: Rural/Metro shall produce an ambulance response time of 10 minutes, zero seconds or less for at least 90% of all successfully completed incoming emergency request phone calls from police/fire dispatch or the public as determined by the dispatcher in strict accordance with approved telephone protocols, except in the those circumstances when extreme weather or other unanticipated factors, including but not limited to road closures due to accidents or road construction, prevent a timely response. Penalties for violation shall be determined in accordance with Exhibit A, Section 10.

9. Data Collection and Reporting Required. Rural/Metro's data collection and reporting systems shall meet mutually agreed upon reasonable standards, which reports shall be furnished to Customer at least quarterly or upon written request. Rural/Metro agrees to meet with representative of Customer on a regular basis, at mutually acceptable times, to review policies, procedures, and quality issues.

10. Third Party or Patient Payment. Rural/Metro shall bill Medicare, Medicaid, third party payers, or the patient, including any co-payments or deductibles, at its full general public rates and charges for Services.
11. Rate Adjustments. Rural/Metro may adjust Rural/Metro's rates and charges for Services from time to time.
12. Fair Market Value. This Agreement has been negotiated at arms length and in good faith by the parties. Nothing contained in this Agreement, including any compensation paid or payable, is intended or shall be construed: (i) to require, influence or otherwise induce or solicit either party regarding referrals of business or patients, or the recommending the ordering of any items or services of any kind whatsoever to the other party or any of its affiliates, or to any other person, or otherwise generate business between the parties to be reimbursed in whole or in part by any Federal Health Care Program, or (ii) to interfere with a patient's right to choose his or her own health care provider.
13. Indemnification. To the extent permitted by law, each party, its officers, directors, and employees ("Indemnitor") shall indemnify and hold harmless the other, its officers, directors, and employees, ("Indemnitee") for, from and against all costs, claims, losses, liabilities, penalties, fines, citations, expenses, forfeitures or other damages, including but not limited to settlements, defense costs, judgments, court costs, expert(s) fees and reasonable fees of attorneys, incident to, and which it may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of Applicable Law, to the extent that such damage was caused by, in whole or in part, incident to or arose out of this Agreement and the Indemnitor's: (i) breach of this Agreement; or (ii) negligent or willful act(s) or omission(s); or (iii) violation of Applicable Law; or (iv) any employment, workers' compensation or other related claim by Indemnitor's employees, agents or subcontractors. Nothing in this section shall limit any right to contribution or other allocation of fault between the parties as determined by a court of competent jurisdiction and as permitted by all Applicable Law.
14. Term of Agreement and Renewal Provisions. This Agreement shall commence on the Effective Date of this Agreement and continue for a period of two (2) years. This agreement shall also provide for two (2) - one (1) year renewals of this agreement upon written consent by both parties. These renewals must be mutual agreed upon by both the Ambulance Service and the Town of West Seneca to take effect. Either Party may terminate this Agreement at anytime upon thirty (30) days' notice.
15. Termination for Default. Customer may terminate this Agreement upon a default of Rural/Metro. A "default" is one that is of urgent public necessity, i.e.: (i) Rural/Metro materially breaches the Agreement resulting in a complete system failure, and/or an actual, continuing material adverse impact and endangerment to the health and welfare, safety and quality of care to the citizens of Customer, and (ii) Customer has been provided sixty (60) days written notice of such default to Rural/Metro and Rural/Metro does not cure such default in a reasonable period of time or raise any reasonable contractual, legal or equitable defenses to such default.

16. Regulatory Changes. Rural/Metro reserves the right to modify this Agreement, upon thirty (30) days notice to Customer in the event any Applicable Law, government policy or program change is passed or adopted effecting Rural/Metro's rates, provisions of services and/or obligations.
17. Compliance with Anti-Kickback Statute. Each party shall comply with the Federal Health Care Programs' Anti-Kickback Statute (42 U.S.C. § 1320a-7b) and any applicable regulations promulgated thereunder. The parties further recognize that this Agreement shall be subject to the amendments of the Anti-Kickback Statute or any of its applicable regulations. In the event any applicable provisions of the Anti-Kickback Statute or its regulations invalidate, or are otherwise inconsistent with the terms of this Agreement, or would cause one or both of the parties to be in violation of the law, the parties shall exercise their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of the Statute and its applicable regulations.
18. Compliance with Applicable Law. Both parties agree to be in full compliance with all Applicable Law and shall immediately notify the non-breaching party in the event it has failed to comply with this Section. In such an event, the non-breaching party may immediately terminate this Agreement.
19. EXCLUSION OF CERTAIN DAMAGES. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY AND ITS AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOST PROFITS, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE BASIS OF THE CLAIM, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
20. Independent Contractor. Rural/Metro is an independent contractor and nothing in this Agreement shall be construed as creating an employment relationship, agency, partnership, or joint venture between the parties. Each party shall control and direct the methods by which it performs its responsibilities hereunder. Except as provided herein, neither party is authorized to act on behalf of the other in any other matter whatsoever. In the event of medical necessity, Customer personnel may be requested to assist Rural/Metro in the continued medical care medically necessary for the care of the patient by accompanying the patient during Rural/Metro transportation. Under no circumstances shall Customer's employee be considered an employee of Rural/Metro.
21. Waivers. The failure by either party to insist on strict performance by the other party of any provision of this Agreement shall not be a waiver of any subsequent breach or default of any provision of this Agreement.
22. Governing Law. This Agreement shall be subject to and governed according to the laws of the State of New York, regardless of whether either party is or may become a resident of another state. The parties agree that the venue and jurisdiction shall be exclusively in the state and federal courts located in the County of Erie County in the State of New York.

23. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, assigns or other legal representatives.
24. Assignment. Neither party may assign its rights or obligations under this Agreement to a third party without the prior written consent of the other party, which shall not be unreasonably withheld, and any attempted assignment without such consent shall be null and void. This Agreement shall be binding upon and for the sole benefit of the parties hereto and their respective successors and permitted assigns.
25. Severability. If any portion or portions of this Agreement shall be for any reason invalid or unenforceable, the remaining portion(s) shall be valid and enforceable and carried into effect unless to do so would clearly violate the present legal and valid intention of the parties hereto.
26. Headings. The headings used in this Agreement are for convenience only and do not limit the contents of this Agreement.
27. Variations of Pronouns. All pronouns and variations thereof will be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of a person, persons, or entity may require.
28. Survival. Any provisions of this Agreement creating obligations extending beyond the term of this Agreement shall survive the expiration or termination of this Agreement, regardless of the reason for such termination.
29. Authorization for Agreement. All necessary laws, resolutions, and corporate actions have duly authorized the execution and performance of this Agreement and this Agreement constitutes the valid and enforceable obligations of the parties in accordance with its terms.
30. Force Majeure. Either party shall be excused for failures and delays in performance of its respective obligations under this Agreement due to any cause beyond its control and without fault, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, terrorism, explosion or inability due to any of the aforementioned causes to obtain labor, materials, roadways or facilities. In addition to the above, Rural/Metro shall be excused for failures and delays in performance of its obligations under this Agreement due to adverse weather conditions, natural physical barriers, such as mountains, hills or washes, traffic conditions, natural disasters and/or other limitations of access to the person requiring Services. Such conditions may impede or effect or block Rural/Metro's efforts to provide Services and/or ability to utilize some or all of its Services' equipment. Nevertheless, each party shall use its best efforts to avoid or remove such causes and to continue performance whenever such causes are removed, and shall notify the other party of the problem.
31. Notices. Any notice required or permitted to be given pursuant to any provisions of this Agreement shall be given in writing, and deposited with the United States Postal Service, postage pre-paid, registered or certified mail, return receipt requested, or by a nationally recognized overnight courier service, addressed as follows:

To Rural/Metro:

Rural/Metro Corporation
9221 E. Via de Ventura
Scottsdale, Arizona 85258
Attn: General Counsel

To Customer:

Town of West Seneca
1250 Union Road
West Seneca, New York 14224
Attn: Supervisor

With a copy to:

Rural/Metro Medical Services
481 William L. Gaither Pkwy.
Buffalo, New York 14221
Attn: Division General Manager

Either party may change the notification addresses listed above with proper written notice.

32. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes any previous agreements or understandings, whether oral or written.
33. Amendments. Any amendments to this Agreement shall be effective only if in writing and signed by authorized representatives of both parties.
34. Execution by Facsimile; Delivery of Original Signed Agreement. This Agreement may be executed by facsimile, and shall be deemed effectively executed upon the receipt by both parties of the last page of this Agreement duly executed by the other party. Each party to this Agreement agrees to deliver two original, inked and signed Agreements within two days of faxing the executed last page hereof.
35. Legal Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach or default hereof, or to enforce the Dispute Resolution section, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees, costs, and expenses.
36. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.
37. No Third Party Beneficiary. Neither party intends in any manner whatsoever to create an interest or beneficiary in a third party.
38. Exhibits. All Exhibits referenced herein are incorporated into this Agreement in their entirety. Agreement when used throughout this Agreement shall include all referenced Exhibits.
39. Publicity Provision. Neither party shall use any trademarks, service marks, visual product representations, trade names, logos or other commercial or product designations of the other party, or disclose such without said party's express prior written consent. In particular, neither

party shall identify or make reference to the other party in any advertising or other promotional modality regardless of its form without explicit prior written consent from said party.

40. IP Provision. Nothing in this Agreement is intended to grant a license or any rights of any nature whatsoever to Rural/Metro's intellectual property which may include but is not limited to its any of its patents, mask work rights, trademarks, trade names, service marks, logos, copyrights, derivatives, software or any other intellectual property rights of Rural/Metro.

41. Dispute Resolution. In the event of a dispute, the parties will consider the use of mediation and/or arbitration to resolve the dispute instead of litigation except for actions involving equity or injunctive relief.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives on the day and year first above written.

LaSalle Ambulance, Inc.

By: 

Name: Michael P. DiMino

Title: President

Town of West Seneca

By: 

Name: _____

Title: _____

Towns Ambulance Service, Inc.

By: 

Name: Michael P. DiMino

Title: President

Reviewed by Legal Dept.



EXHIBIT A

Description of Services includes but is not limited to:

1. Rural/Metro provides emergency and non-emergency medical transportation services.
2. **Provision of Services**
Rural/Metro shall manage all day-to-day operations, including field operations, billing, collections, purchasing and other operational functions. Rural/Metro shall negotiate all mutual aid agreements, maintain all facilities and equipment, hire/terminate and provide or arrange for in-service training of all field personnel.
3. Rural/Metro shall provide EMD Service for the Town of West Seneca and shall maintain the ability to receive such calls through the 911 system. Rural/Metro shall maintain Nationally Certified dispatchers to handle such calls. Certification will be through the National Academy of Emergency Dispatch (NAED).
4. Rural/Metro shall give preference to their employees who live within the Town of West Seneca to staff an Advanced Life Support Unit "ALSU" based within the Municipality to help decrease response times.
5. If Rural/Metro has the opportunity to interview the caller and through the EMD it is determined that a Basic Life Support ("BLS") Cold response is appropriate, an ambulance may be sent to the call at a BLS Level.
6. **Response Modes**
 - a. HOT Response (LIGHTS AND SIREN) shall conform to National EMD Standards:
An ALSU shall respond to a scene which is perceived to be a true emergency situation. True emergencies are defined by National EMD Standards for a response to any situation in which there is a high probability of death or life threatening illness or injury. The risk of emergency operations must be demonstrably able to make a difference in patient outcome.
 - b. COLD Response (No lights and Siren) shall conform to National EMD Standards:
The nature of the emergency as determined by the Public Safety Dispatcher or a qualified member of the Volunteer Fire Department on site shall determine an ALSU response. If determined by the Public Safety Dispatcher or a member of the Fire department or Police Department, the incident may be upgraded at any time to a HOT Response.
 - c. Rural/Metro No Fire Company Required:
When the Town of West Seneca Public Dispatch Office receives a call for emergency medical services, where the fire company emergency medical services are not required or where the caller specifically declines the fire company emergency medical services, the Town of West Seneca Public Dispatch Office will transmit the call directly to Rural/Metro and document the response times. Response times shall be in accordance with Section 8a. However, should the public safety dispatcher determine that the call for emergency medical service is of a serious or life threatening nature, the public safety dispatcher will dispatch the fire company and Rural/Metro.

7. Records/Reports

Rural/Metro shall provide to the Town of West Seneca a monthly response report tallied by Ambulance only incidents, individual Fire Department incidents, and total Fire Department incidents to include total requests, total cancelled at scene, total transports and average response time. The report shall also include the following data: Date, Run Number, Ambulance Number, Call Location, and Total response time. Such monthly response reports shall be delivered to the Town of West Seneca on or before the tenth day of the following month.

8. Fire Scene Standby

An ALSU shall be on standby at the scene of all working fires, hazardous materials situations and major police incidents. The ALSU shall respond to the scene as a COLD Response, unless notified of a trapped or fallen citizen, firefighter, police officer or other first responder. Upon notification of a trapped or fallen situation, the ALSU shall then respond to the scene as a HOT response. An ALSU shall provide service and transportation to any injured firefighter, police officer or other first responder. Notification of such incidents will be relayed to Rural/Metro by the Town of West Seneca Public Safety Dispatch Office. The ALSU shall standby at the scene until released by the officer in charge. At the point that the driver of the ALSU standing by is informed that he/she will be transporting a patient from the scene to a hospital, Rural/Metro shall dispatch a replacement to the scene to standby as described.

9. Equipment

All fire district's disposable equipment utilized by Rural/Metro and when Rural/Metro transports shall be replaced at the scene, but in no event later than forty-eight (48) hours from the date of its use.

10. Penalties

Penalties for violation of the terms and conditions of this Agreement, including any Exhibits thereto shall be determined by a Board of members; three (3) as selected by the West Seneca Town Board, two (2) as selected by Rural/Metro, and two (2) as selected by the West Seneca Town Chiefs and Commissioners. No member of the Board shall be a sitting Town Board Member. No more than one (1) member selected by Rural/Metro shall be considered management of Rural/Metro. Penalties for violation of this Agreement shall be reasonable to all parties involved, and based on full consideration of all factors involved.

Nothing in this provision limits or otherwise restricts the rights of either party to cancel this Agreement, as stated herein.

11. Incident Command/Unified Command System

At the scene of all emergency incidents, motor vehicle accidents, fires or any other emergency response requiring medical assistance by Rural/Metro, all requests for additional ALSU units, personnel or other such equipment must be requested through the command structure of the Volunteer Fire District(s) or Police Department on scene. The commander or his/her designee shall request additional ALSU units, personnel or equipment through the Town of West Seneca Public Safety Dispatch Office.

12. Specialized Responses/Disaster Plan

Rural/Metro shall provide a copy of its disaster plan/mutual aid plan to the Senior Public Safety Dispatcher for the Town of West Seneca and the Chairman of the Board of the Fire Chiefs and

Fire Commissioners, detailing procedures to be utilized by Rural/Metro for Multiple Casualty Incidents (MCI), Hazardous Materials Response and Transportation, Weapons of Mass Destruction and other specialized types of responses. The plan shall be updated on an annual basis and shall be effective and delivered to the Town of West Seneca and the various fire companies in the Town no later than the 1st day of January of each year. The plan shall be distributed as follows: four (4) copies to the Town Attorney, one (1) copy to the Chief of Police, one (1) copy to the Town Disaster Coordinator and one (1) copy to each fire district in the Town of West Seneca.

13. Responsibility at Emergency Scene

The officer in charge of the scene servicing the Town of West Seneca shall have charge of the protection of life and coordination of personnel at the scene of an emergency, subject, however, to the provisions of this section. The Fire District shall have charge of rendering emergency care until transferred to the Rural/Metro, who then, in accordance with its reasonable discretion, shall have charge of rendering of emergency life support services as defined herein to any and all sick or injured persons at the scene of an emergency. Volunteer firefighters may be utilized for assistance at the scene in accordance with their training and capabilities. This assistance may continue inside the ambulance while en-route to the hospital. In the event, however, that action or inaction is deemed to be required for the preservation of life or personal safety due to physical circumstances that may exist at such emergency scene, the ranking officer shall have the authority to direct or control Rural/Metro personnel in the rendering of such services. In all other situations where life or personal safety have not become endangered, the authority of the ranking officer shall be limited to the directing of Rural/Metro personnel to station themselves or their equipment at such scene so that such personnel or equipment do not jeopardize the overall fire extinguishment and rescue efforts at the emergency scene.

14. Exclusive Contract

- a. The Town of West Seneca hereby agrees that it shall transmit all calls for emergency advanced life support services to Rural/Metro, except when another service is specifically requested by a patient or a patient's representative on the scene. The Town of West Seneca may initiate a request for service to any other advanced life support service company in the event Rural/Metro is unable to provide service for whatever reason.
- b. It is the responsibility of Rural/Metro to provide for mutual aid response and transport assistance with other certified basic life support and advanced life support companies in the event there is a need for multiple units that Rural/Metro is not able to provide to the Town of West Seneca. This mutual aid plan must be included in the Rural/Metro Disaster Plan and must be established within one (1) month from the Effective Date of this Agreement and shall be maintained for the term of the Agreement. The mutual aid plan must be communicated in writing and be delivered on or before January 1st of each year to the Town of West Seneca. The mutual aid plan must detail the following:
 1. Number and type of basic and advanced life support units available within a thirty (30) minute period of time for Mass Casualty (MCI) emergency incidents. The minimum number of available units must be at least twelve (12) ALSUs and six (6) BLS units.
 2. Name, address and telephone number of the operator of the BLS units and ALSUs.
 3. Approximate time for BLS and ALSUs to be available for transportation in the Town of West Seneca.

15. Notice of Complaints

The Town of West Seneca, the Fire Districts in the Town of West Seneca and the Rural/Metro hereby agree to notify each other, in writing, within ten (10) days of receiving any complaints relative to the emergency service provided by the Rural/Metro, or any charge for such service made by the Rural/Metro covered by this Agreement. Rural/Metro shall cooperate with the Town of West Seneca, with the Better Business Bureau of Buffalo, New York, regional and/or state emergency medical services councils, and with any other investigative organization in the investigation of the validity of any and all such complaints.

16. Notices of Claim

Rural/Metro shall notify the Town of West Seneca and the Fire Districts in the Town of West Seneca in writing, within ten (10) days of receiving written notice of any action or proceeding in law that has been or will be made against Rural/Metro where it reasonably appears that a recovery in such action or proceeding may exceed Rural/Metro's insurance policy limits. Rural/Metro further shall report to the Town of West Seneca and the Fire Districts in the Town of West Seneca, in writing, of the progress of such action or proceeding in law, until such time that such action or proceeding has been terminated.

17. Training

The Town of West Seneca, the Fire Districts in the Town of West and Rural/Metro shall cooperate to train volunteer fire personnel in various emergency medical techniques, and to train all involved employees of both parties to cooperate with transmitting and receiving of emergency calls. Such training shall be done at least once every other year.

18. Rates for Services

- a. No charges shall be made or levied upon the Town of West Seneca for the performance of any services as described in this Agreement, except as herein provided.

- b. The rates that Rural/Metro may charge during the term of this Agreement for all services rendered under this agreement to any patient are set forth by the County Medicaid, Federal Medicare and Health Maintenance Organization (HMO) established rates. Rural/Metro shall make a diligent effort to collect all of the charges made or levied upon all of its patients. The use of additional employees, attorneys or of a collection agency, whichever Rural/Metro elects to use, shall be made if collection efforts are not adequate. Nothing in this Agreement shall prevent Rural/Metro from attempting to collect all of the charges made or levied upon any patient, except as herein otherwise provided, even if such patient's insurance policy does not cover the total charge.
- c. In the event a patient transported by Rural/Metro is not covered by any applicable insurance program as outlined in Section 18.b above, the applied rates for service that may be charged to the patient will be the current Medicare allowable rates, at the time of transport, as prescribed by Medicare.

19. General Termination Provisions

a. Termination with Notice

Unless otherwise specified in this Agreement, no termination shall become effective until the defaulting party has received written notice of the default and has been given thirty (30) days in which to correct the default. A default shall mean a material breach of any provision of this Agreement according to the language of the Agreement. Upon failure of either party to amend or correct the default within thirty (30) days of written notice thereof, this Agreement shall terminate automatically.

b. Immediate Termination

1. **Recurring Default** - In the event that either party has received a notice of termination under subparagraph (a) of this Section due to a default in the performance of a substantial requirement of this Agreement and has, within the prescribed thirty (30) day period remedied or corrected such default and subsequently defaults with respect to the same substantial requirement of this Agreement on a second or successive occasion, this Agreement shall be terminable immediately upon delivery of written notice to the party in default of the intention of the party in conformance to terminate pursuant to this provision.
2. **Termination for Substantial Violation** - In the event that either party commits a willful default, which default also tends to threaten the health or safety of the residents of the Town of West Seneca, this Agreement shall terminate immediately upon service of a written notice upon the party in default of the intention of the party in compliance to terminate.
3. **No Penalty** - In the event that this Agreement is correctly terminated pursuant to the termination provisions of this Section or of any other Section providing for termination therein, the party in default shall make no claim whatsoever against the party in compliance for any damages resulting from such termination. The party in compliance shall, however, retain the right to recover all lost profits and any reasonable expenses in connection with such completion of the services contemplated herein.
4. **Wrongful Termination** - In the event that either party wrongfully terminates this Agreement as may be determined by a court of law or otherwise, the party allegedly in default shall retain the right to recover damages for such termination and to demand reinstatement and specific performance of the Agreement.

Other Definitions

"Services" means the Description of Services set forth above which shall be covered for payment by Customer or a third party and subject to this Agreement.

"Applicable Law" shall include all federal, state and local laws, statutes, regulations, codes, ordinances, rules and/or Executive Orders, as amended, applicable to the services and/or obligations of the parties hereunder.

"Response Time" shall mean the total elapsed time between the moment Rural/Metro personnel have acquired call back number, patient location, and nature of problem information and a unit has been dispatched (i.e., "Time Call Received") to the moment the responding unit arrives upon the scene of the emergency incident (i.e., "Time Unit Arrived").

EXHIBIT C

Insurance

1. Insurance. Prior to the commencement of services performed hereunder and during the term of this Agreement, including any extension(s) thereof, Rural/Metro shall obtain and provide the following insurance:

a. Automobile Liability. Automobile Liability Insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000 for each occurrence with respect to Rural/Metro's owned, hired and non-owned vehicles utilized in the performance of its services. Uninsured motorist coverage, underinsured motorist coverage and personal injury protection or "no fault" insurance coverage shall not be required under this Agreement, except where required by specific state law and, then, only at the statutory minimum required.

Note: Rural/Metro does not purchase underinsured/uninsured motorist coverage as allowed by law. Any requirement to provide such coverage, which is not otherwise required by law, is an uninsured liability to Rural/Metro and must be rejected.

b. Commercial General Liability. Commercial General Liability Insurance covering bodily injury and property damage, with a limit of not less than \$1,000,000 for each occurrence and a \$5,000,000 aggregate limit.

c. Professional Liability. Rural/Metro shall maintain Professional Liability Insurance covering bodily injury, with a limit of not less than \$1,000,000 for each occurrence and a \$5,000,000 aggregate limit.

d. Worker's Compensation. Rural/Metro shall carry Workers' Compensation Insurance to cover obligations imposed by federal and state statutes; and Employer's Liability Insurance with a limit of not less than \$1,000,000.

2. Primary Insurance. Rural/Metro's insurance shall respond first as it relates to bodily injury or property damage caused by Rural/Metro in the performance of its services hereunder.

3. Certificates of Insurance. Upon request, Rural/Metro shall furnish to Customer Certificate(s) of Insurance issued by Rural/Metro's insurer as evidence that the coverage: (1) is placed with reasonably acceptable insurers; (2) is detailed on the Certificate(s) as specified in this Agreement; and (3) is in full force and effect on the commencement date of services. Upon request, or as required by this Agreement, Rural/Metro shall furnish to Customer updated Certificate(s) as policies are renewed.

Note: Rural/Metro will not provide copies of insurance policies and/or endorsements as these documents are drafted specifically to Rural/Metro's business and contain confidential and proprietary business information which might not otherwise be available to the general public.

4. Insurance Company Rating. Insurance policies required under this Agreement shall have been issued by an insurance company having a financial rating of B plus X or better according to the A.M. Best Rating Guide as of the commencement of this Agreement.

5. Notice of Cancellation. Rural/Metro shall endeavor to notify the Customer of cancellation of any required insurance coverage.

6. Supplemental Insurance. During the term of this Agreement, Customer, in its reasonable discretion, may require Rural/Metro to obtain additional coverage or increase the amount of any insurance Rural/Metro carries to the extent the coverage is reasonably and commercially available to Rural/Metro ("Supplemental Coverage"). In such event, Customer shall pay to Rural/Metro the extra cost of the Supplemental Coverage. Such appropriation and payment of funds shall be a condition precedent to Rural/Metro's duty to obtain such Supplemental Coverage. Customer shall allow reasonable time for Rural/Metro's broker to research the market availability of such required Supplemental Coverage.

7. Claims Made. In the event Rural/Metro elects to obtain insurance required under this Agreement on a "claims made" basis, then such coverage shall extend for three (3) years past the completion of the services rendered by Rural/Metro to Customer and Rural/Metro shall, upon request, provide Customer a Certificate of Insurance evidencing such extended coverage.

8. Market Fluctuations. The Customer acknowledges that, from time to time, insurance market fluctuations may increase the premiums Rural/Metro must pay in order to secure the coverage required under this Agreement. In the event that the premiums increase during the term of this Agreement, the Customer agrees to consider in good faith Rural/Metro's request for an equitable adjustment in Rural/Metro rates to cover the increased cost.