

459



**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**FROM:** Riverside County Regional Medical Center

**SUBMITTAL DATE:**  
January 10, 2012

**SUBJECT:** Professional Services Agreement for Non-Emergency Medical Transportation Services for Riverside County HealthCare (RCHC)

**RECOMMENDED MOTION:** Move that the Board of Supervisors:

- 1) Ratify and authorize the Chairman of the Board to sign the Professional Services Agreements with the following Contractors to provide non-emergency medical transportation services for Riverside County, for the period between January 1, 2012 through June 30, 2012, with the option to renew each year continuing up to the program expiration date of December 31, 2013 not to exceed the aggregate amount of \$250,000 annually: Express Transportation Systems and NEMT Solutions, LLC;
- 2) Authorize the Purchasing Agent to move dollars between these agreements as needs dictate as long as the aggregate amount does not exceed \$250,000 annually; and
- 3) Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise renewal options, based on the availability of fiscal funding, and to sign amendments that do not change the substantive terms of the agreement up to ten percent the maximum contract amount.

*Susan D. Harrington*

*Douglas D. Bagley*

Susan Harrington, Director of Public Health

Douglas D. Bagley, Hospital Director

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$250,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/2012

<b>SOURCE OF FUNDS:</b> 100% Low Income Health Plan / Riverside County Health Care	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY: *Michael R. Shetter*  
Michael R. Shetter

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Ashley, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Stone, Benoit and Ashley  
 Nays: None  
 Absent: Tavaglione  
 Date: January 10, 2012  
 xc: RCRMC, Purchasing, Public Health

Kecia Harper-Ihem  
 Clerk of the Board  
 By: *[Signature]*  
 Deputy

3.46

FORM APPROVED COUNTY COUNSEL  
 BY: *[Signature]* DATE: 1/11  
 NEAL R. KIPNIS

Departmental Concurrence

Purchasing: *[Signature]*  
 Mark Seller-Assistant Director

Policy  
 Policy  
 Consent  
 Consent

Dep't Recomm.:  
 Per Exec. Ofc.:

**SUBJECT:** Professional Services Agreement for Non-Emergency Medical Transportation Services for Riverside County HealthCare (RCHC)

**BACKGROUND:**

The Department of Health Care Services (DHCS) released program applications for all eligible entities to participate in the Low Income Health Program (LIHP), which provides entities the opportunity to help build the bridge to the health care reform in 2014. The LIHP consists of the Medicaid Coverage Expansion (MCE) and the Health Care Coverage Initiative (HCCI) programs. These programs provide health care benefits to eligible persons in accordance with the Welfare & Institutions Code (WIC) Section 15909 - 15915 (Chapter 723, Statutes of 2010, Assembly Bill 342), and the Special Terms and Conditions (STCs) of the federal section 1115(a) California Bridge to Reform Demonstration. Riverside County Regional Medical Center (RCRMC) in conjunction with, other Riverside County departments partnered with Inland Empire Health Plan (IEHP) as a third party administrator in administering the service which implements the requirements of LIHP. Through this collaborative partnership, the requirements for the LIHP were developed and incorporated in the Riverside County HealthCare (RCHC). RCHC is Riverside County's new health care plan to help bridge to the health care reform in 2014. Patients eligible to participate in RCHC will have the opportunity to receive services through specific referrals. RCHC expects approximately 20,000 eligible participants/patients to participate in the health care plan.

In an effort to provide eligible patients the opportunity to utilize the service through RCHC, County Purchasing released Request for Proposal (RFP MCARC172), to secure non-emergency medical transportation services for eligible participants throughout Riverside County. Solicitations were sent to four (4) prospective vendors specializing in this service and advertised on the County's Internet/Website. Four bids were received and evaluated. The bids were reviewed based on the bidder's overall responsiveness to the RFP requirements, the ability to provide services to eligible participants residing throughout Riverside County, the bidders' long time history and experience in the business, and the overall costs.

**PRICE REASONABLENESS:**

After a review and evaluation of the four proposals received, the evaluation team recommended a best and final (BAFO) request from each bidder to clarify costs. It was determined that Express Transportation Systems and NEMT Solutions, LLC were the most responsible/responsive bidders, based on bidders experience, price, and value to the County.

Of the four BAFO bids reviewed, Victorville Medical Transportation provided the lowest base charge however; was not the lowest in mileage rate. In addition, Victorville did not demonstrate that they have a very good & long standing history (track record) to service the entire County. Therefore, the two bidders (NEMT Solutions, LLC & Express Transportation Systems) were selected based on lowest mileage rate and able to serve the entire County with appropriate vehicles to accommodate gurneys & wheelchairs.

**FINANCIAL IMPACT:**

100% LIHP. Based on program enrollment, a budget adjustment may be needed mid-fiscal year to reallocate funds as the program develops. No additional general fund support is necessary as all expenditures will be reimbursed through the LIHP.

**REVIEW/APPROVAL:**

County Counsel and County Purchasing

DB:ns

**PROFESSIONAL SERVICE AGREEMENT**

**for**

**NON-EMERGENCY MEDICAL TRANSPORTATION SERVICES**

**between**

**COUNTY OF RIVERSIDE**

**and**

**NEMT SOLUTIONS, LLC**



**TABLE OF CONTENTS**

<b><u>SECTION HEADING</u></b>	<b><u>PAGE NUMBER</u></b>
1. Description of Services.....	3
2. Period of Performance.....	3
3. Compensation.....	3
4. Alteration or Changes to the Agreement .....	4
5. Termination.....	5
6. Ownership/Use of Contract Materials and Products .....	6
7. Conduct of Contractor.....	6
8. Inspection of Service: Quality Control/Assurance .....	6
9. Independent Contractor .....	7
10. Subcontract for Work or Services.....	7
11. Disputes .....	8
12. Licensing and Permits .....	8
13. Use by Other Political Entities.....	9
14. Non-Discrimination .....	9
15. Records and Documents .....	9
16. Confidentiality .....	9
17. Administration/Contract Liaison.....	10
18. Notices.....	10
19. Force Majeure.....	11
20. Hold Harmless/Indemnification.....	11
21. Insurance .....	12
22. General .....	15
Exhibit A-Scope of Service.....	17
Exhibit B- Service Areas.....	26
Exhibit C- Payment Provisions.....	27
Attachment I-HIPAA Business Associate Attachment to the Agreement .....	28

This Agreement, made and entered into this 21 day of DEC, 2011, by and between NEMT Solutions LLC, (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, through its health care program, Riverside County Health Care, (herein referred to as "COUNTY"). The parties agree as follows:

1. **Description of Services**

1.1 CONTRACTOR shall provide all services as outlined and specified in **Exhibit A**, Scope of Services, encompass all areas and provide services in each region listed in **Exhibit B**, Service Areas, at the prices stated in **Exhibit C**, Payment Provisions, and adhere to the provisions specified in **Attachment I**, HIPAA Associate Addendum, all as attached hereto and incorporated herein.

1.2 CONTRACTOR represents that it has the skills, experience and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in the Payment Provisions. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. **Period of Performance**

2.1 The period of performance shall be effective as of January 1, 2012 and continue on a fiscal year, with the option to renew annually for one year continuing up to the program expiration date of December 31, 2013, unless terminated earlier. CONTRACTOR shall commence performance based on a specified time schedule agreed upon by both parties and shall diligently and continuously perform thereafter.

3. **Compensation**

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of **Exhibit C**, Payment Provisions. Maximum

payments by COUNTY to CONTRACTOR shall not exceed two hundred fifty thousand dollars (\$250,000) annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit C, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

**3.2** CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices for this Agreement and send originals and duplicate copies of invoices to:

**Riverside County Health Care**

**PO Box 11759**

**San Bernardino, CA 92423-1759**

- a) Each invoice shall contain a minimum of the following information: Patient Name, Patient ID#, Patient Date of Birth, Authorization #, Dates of Service(s), destination (to and from location), total number of miles, and total invoice total.
- b) Invoices shall be rendered monthly in arrears.

**3.3** The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

**3.4** COUNTY will mail CONTRACTOR payments to the following remit to address: **NEMT Solutions LLC, 24167 Cruise Circle Drive, Canyon Lake, CA 92587.**

#### **4. Alteration or Changes to the Agreement**

**4.1** The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for

the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

**4.2** Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

## **5. Termination**

**5.1.** COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

**5.2** COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

**5.3** After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

**5.4** After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit C.

**5.5** CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. **Ownership/Use of Contract Materials and Products**

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports or products without prior written authorization of the COUNTY.

7. **Conduct of Contractor**

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. **Inspection of Service; Quality Control/Assurance**

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine



the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

**8.2** CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

**9. Independent Contractor**

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

**10. Subcontract for Work or Services**

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior approval of the COUNTY; but this

provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

Should CONTRACTOR choose to subcontract, CONTRACTOR shall obtain prior approval from COUNTY and ensure all and any subcontractors abide by all the same terms and conditions stipulated in this Contract Agreement.

## **11. Disputes**

**11.1** The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

**11.2** Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

## **12. Licensing and Permits**

**12.1** CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

**12.2** If non-emergency ambulance is used by CONTRACTOR, CONTRACTOR must provide and show proof of Riverside County permit upon COUNTY request.

**13. Use By Other Political Entities**

The CONTRACTOR agrees to extend the same pricing, terms and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

**14. Non-Discrimination**

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

**15. Records and Documents**

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five (5) years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

**16. Confidentiality**

**16.1** The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to

public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

16.3 The CONTRACTOR in this Agreement is subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-91, enacted August 21, 1996, and the laws and regulations promulgated subsequent thereto. CONTRACTOR shall adhere to all terms and conditions as outlined and specified in **Attachment I**, attached hereto and incorporated herein.

**17. Administration/Contract Liaison**

Riverside County Regional Medical Center or designee shall administer this Agreement on behalf of Riverside County HealthCare (RCHC). Riverside County Regional Medical Center Contracts Administration is to serve as the liaison with CONTRACTOR in connection with this Agreement.

**18. Notices**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

**COUNTY OF RIVERSIDE**

Riverside County Regional Medical Center  
26520 Cactus Avenue

**CONTRACTOR**

NEMT Solutions, LLC  
31526 Railroad Canyons Drive., Suite 4

Moreno Valley, CA 92555  
Attn: Contracts Administration

Canyon Lake, CA 92587  
Attn: Contracts Department

**CONTRACTOR REMIT TO ADDRESS:**

NEMT Solutions, LLC  
24167 Cruise Circle Drive  
Canyon Lake, CA 92587

**19. Force Majeure**

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

**20. Hold Harmless/Indemnification**

**20.1** Each party shall indemnify and hold harmless the other party from any and all claims, expenses, losses and obligations arising out of the indemnifying party's negligent acts or omissions or willful misconduct.

**20.2** With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein.

**20.2** CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

**20.3** The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

**20.4** In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

**20.5** CONTRACTOR's indemnification obligations shall also apply to any action or claim regarding actual or alleged intellectual property infringement related to any material or product provided to COUNTY pursuant to this Agreement. In the event of any such action or claim, CONTRACTOR shall provide immediate notice to COUNTY of the action or claim. CONTRACTOR may defend or settle the action or claim as CONTRACTOR deems appropriate; however, CONTRACTOR shall be required to obtain for COUNTY the right to continue to use the material or product (or a similar non-infringing material or product with the same function) on terms identical to those stated in this Agreement.

## **21. Insurance**

**21.1** Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

**21.2 Workers' Compensation:** If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

**21.3 Commercial General Liability:** Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

**21.4 Vehicle Liability:** If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

**21.5 Professional Liability:** Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

**21.6 General Insurance Provisions - All lines:**

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceed \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original

copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.



**22. General**

**22.1** CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**22.2** Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

**22.3** In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

**22.4** CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

**22.5** CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims or encumbrances.

**22.6** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

**22.7** The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

**22.8** CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the

event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

22.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

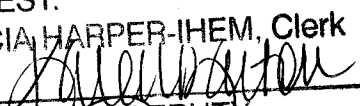
22.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

22.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

22.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

**COUNTY:**

Riverside County  
26520 Cactus Avenue  
Moreno Valley, CA 92555


ATTEST:  
KECIA HARPER-IHEM, Clerk  
  
DEPUTY

Signature: 

Print Name: JOHN TAVAGLIONE

Title: Chairperson

Dated: JAN 10 2012

FORM APPROVED COUNTY COUNSEL  
BY:  DATE: 12/29/11

**CONTRACTOR:**

NEMT Solutions, LLC  
31526 Railroad Canyon Drive, Suite 4  
Canyon Lake, CA 92587

Signature: 

Print Name: SCOTT WEST

Title: PRESIDENT

Dated: 12/21/2011

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

NEMT Solutions, LLC

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CONTRACTOR is responsible for providing transportation services comprised of Specialized Medical Vehicles (SMV) and common carriers. These modes of transportation and their respective standards are described below in the scope of work.

CONTRACTOR shall use Litter Van(s) or Wheelchair Van(s) that meet applicable state and federal laws, regulations and standards, including Sections 51231.1 and 51231.2 of Title 22 of the California Code of Regulations.

**1.0 SPECIALIZED MEDICAL VEHICLES (SMV) -**

All specialized medical vehicles (SMV) also referred to as wheelchair vans / litter vans. These are vehicles that are equipped with permanently installed ramps and lifts and able to transport gurneys and wheelchairs as required. These SMV's must be in compliance with the American with Disabilities Acts (ADA) requirements, licensed and inspected annually by the Department of Motor Vehicles (DMV) and California Department of Transportation (Caltrans).

1.1 CONTRACTOR shall provide gurneys and wheelchairs as required.

**2.0 COMMON CARRIERS -**

A common carrier provides transportation other than ambulance and SMV. These vehicles do not have permanently installed ramps or lifts and are not certified for cot/stretchers transportation, however; are required to be licensed and inspected annually by the Department of Motor Vehicles (DMV).

**3.0 DRIVER STANDARDS -**

3.1 CONTRACTOR shall ensure that all drivers are legally licensed by the State of California to operate their assigned vehicle. CONTRACTOR shall also ensure that all drivers are competent in their driving habits, are courteous and helpful to all passengers, and are neat and clean in appearance. First aid and CPR training shall be maintained by drivers and attendants.

3.2 All drivers must be at least twenty-one (21) years of age and have an appropriate and unrestricted (with the exception of corrective lenses) current valid California driver's license.

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

NEMT Solutions, LLC

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- 3.3 Prior to serving as a driver each person shall have received all of the following:
- a) Complete and pass a criminal and drug background clearance check.
  - b) Basic Red Cross or equivalent training in First Aid and Cardio Pulmonary Resuscitation (CPR);
  - c) Have a radio and/or cell phone to contact dispatch center and 9-1-1 for emergencies;
  - d) Specific instructions on care of passengers in seizure; and
  - e) Specific instructions in the use of all ramps, lift equipment and restraint devices used by the CONTRACTOR.
- 3.4 Drivers shall not use litter van(s) or wheelchair van(s) as ambulance.
- 3.5 Drivers shall not use litter van(s) or wheelchair van(s) to transport passenger if: (a) the passenger requires any type of continuous medical monitoring; (b) the passenger's condition is one of which falls under the transportation protocols of the EMS Agency regulating ambulance providers.
- 3.6 Each driver shall receive refresher training and remain current at all times in Basic First Aid and CPR.
- 3.7 Drivers who currently have a suspended or revoked driver's license, commercial or other, are prohibited from driving for any purpose under this contract.
- 3.8 Drivers who receive citations and are convicted of two (2) moving violations and/or accidents related to transportation provided under this Agreement, where the driver was at fault during the full term of the contract, must be removed from service.
- 3.9 Drivers must report any citations they receive to the Contractor's management for recordkeeping and reporting to the COUNTY upon request.
- 3.10 CONTRACTOR is responsible for ensuring that driver standards are maintained at all times. This applies to all forms of transportation.
- 3.11 Any driver receiving two (2) or more complaints from passengers concerning standards in sub-section 1.1 within a five (5) business day period may not be

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

NEMT Solutions, LLC

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utilized until corrective action is taken. All complaints must be documented and become a part of the driver's permanent record/file.

**4.0 DRIVER CONDUCT -**

- 4.1 No driver shall use or be under the influence of alcohol, narcotics, illegal drugs or drugs that impair ability to perform while on duty.
- 4.2 Smoking is prohibited in the vehicles while performing transportation service. "No Smoking" signs shall be visible to all passengers. CONTRACTOR shall require drivers contact their management immediately if passengers fail to comply with this prohibition. And at no time shall drivers smoke while in the vehicle or in the presence of any passenger/patient.
- 4.3 No driver shall touch any passenger except as appropriate and necessary to assist the passenger into or out of the vehicle, into a seat and to secure the seatbelt, as necessary to render first aid or assistance for which the driver has been trained or as indicated for gurney and wheelchair transport.
- 4.4 Drivers shall not wear any type of headphones or earphones at any time while on duty.
- 4.5 Drivers shall not use a cell phone or texting devices while driving.
- 4.6 Drivers shall maintain a comfortable interior cabin temperature at all times while vehicle is occupied by a passenger/patient.
- 4.7 All drivers must wear or have visible, an easily readable official company identification.
- 4.8 At no time shall drivers eat or consume any beverage while in the vehicle or while involved with or in the presence of any passenger/patient.
- 4.9 Drivers must exit the vehicle to open and close vehicle doors when passengers enter or exit the vehicle and provide assistance as necessary to or from the main door of the place of destination for those passenger/patients who require assistance.

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

NEMT Solutions, LLC

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- 4.10 Drivers must properly identify and announce their presence at the entrance of the building at the specified pick-up location if a curbside pick-up is not apparent.
- 4.11 Drivers shall confirm, prior to allowing any vehicle to proceed, that wheelchairs or cot/stretchers are properly secured and that all passengers are properly seat-belted or secured/restrained in their wheelchair or cot/stretcher.
- 4.12 Drivers shall confirm, prior to vehicle departure that the delivered passenger has safely arrived and is inside the destination.
- 4.13 Any driver receiving two (2) or more complaints from passengers/patients concerning cleanliness, courtesies, or other deficiencies noted in this section within a five (5) business day period may not be utilized until corrective action is taken. All complaints must be documented and become a part of the driver's permanent record/file.

**5.0 VEHICLE STANDARDS -**

- 5.1 CONTRACTOR must ensure Litter Van(s) or Wheelchair Van(s) meet applicable state and federal laws, regulations and standards, including Sections 51231.1 and 51231.2 of Title 22 of the California Code of Regulations.
- 5.2 CONTRACTOR must be currently certified by the California Department of Motor Vehicles (DMV) and the California Department of Transportation (Caltrans) and must be able to show proof (and provide copies of certification), upon COUNTY request.
- 5.3 CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

NEMT Solutions, LLC

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Insureds. Additional insurance requirements as part of this service; is stipulated in the Contract Agreement, Section 21 Insurance.

- 5.4 CONTRACTOR must ensure that all vehicles and vehicle equipment adequately meet the requirements as specified in this scope of work. Vehicles and all components must comply with or exceed the manufacturers, state and federal, safety and mechanical operating and maintenance standards for the particular vehicles and models used under this contract. Vehicles must comply with all applicable federal laws including the Americans with Disabilities Act (ADA) regulations.
- 5.5 Any vehicles found deficient with any State or Federal regulations or in the following areas must be immediately removed from service:
- a) ADA regulations;
  - b) Scope of work requirements;
  - c) Department of Motor Vehicles (DMV) licensing requirements;
  - d) If overall condition of the vehicles creates a health or safety hazard for the vehicle occupants;
  - e) Any vehicle receiving two (2) or more legitimized complaints from passengers concerning cleanliness, temperature deficiencies, or other deficiencies within a five (5) day period must be removed from service until vehicles is inspected and appropriate corrective actions taken. Such actions must be documented and become a part of the Contractor's records for County review (upon request).

**6.0 PICK UP AND DELIVERY REQUIREMENTS -**

- 6.1 CONTRACTOR must ensure services are available 24 hours per day, 7 days per week, and every day of the year.
- 6.2 Arrival before the scheduled pick-up time is permitted by the CONTRACTOR; however, a passenger/patient is not required to board the vehicle before the scheduled pick-up time. The driver is not required to wait more than 15 minutes after the scheduled pick up time.

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

NEMT Solutions, LLC

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- 6.3 Drivers shall deliver passengers/patients to their destinations on time for their scheduled appointments.
- 6.4 If delay occurs in the course of picking up scheduled passengers/patients, CONTRACTOR must contact proposed passengers/patients at their pick-up points to inform them of the delay in arrival of vehicle and related schedule, in addition to contacting the facility (pick up point). The driver must advise scheduled passengers/patients and the facility of alternate pick up arrangement when appropriate.

**7.0 BACK-UP VEHICLES -**

- 7.1 CONTRACTOR shall be responsible for arranging for back-up vehicles and/or personnel when notified by COUNTY or the passenger that a vehicle is excessively late, is otherwise unavailable for services, or when specifically requested by COUNTY. The vehicle is excessively late if it is twenty (20) minutes late in meeting its assigned schedule.
- 7.2 A back-up vehicle for an excessively late vehicle or an otherwise unavailable vehicle must be in place within thirty (30) minutes after a vehicle has been deemed unavailable for any reason.

**8.0 SERVICE AREA(S) -**

- 8.1 CONTRACTOR must serve the entire County of Riverside (Banning, Beaumont, Blythe, Calimesa, Canyon Lake, Cathedral City, Coachella, Corona, Desert Hot Springs, Eastvale, Hemet, Indian Wells, Indio, Jurupa Valley, Lake Elsinore, La Quinta, Mecca, Menifee, Moreno Valley, Murrieta, Norco, Palm Desert, Palm Springs, Perris, Rancho Mirage, Riverside, San Jacinto, Temecula and Wildomar and all other unincorporated areas of Riverside County), as specified in subsection 8.2 below and as illustrated in Exhibit B, Service Area.
- 8.2 CONTRACTOR may subcontract with two (2) subcontractors to provide transportation services throughout Riverside County. Premier Medical Transportation will be the primary transportation provider in the area of Riverside



**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

NEMT Solutions, LLC

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County that is west of Palms Springs (Area 1), and Platinum Care Non-Emergency Medical Transportation will be the primary transportation provider in the area of Riverside County that is east of Palm Springs (Area 2); as illustrated in Exhibit B, Service Area.

**9.0 GENERAL ADMINISTRATIVE REQUIREMENTS -**

- 9.1 CONTRACTOR shall staff a call/dispatch center with live customer service representative(s) 24 hours per day, 7 days per week.
- 9.2 CONTRACTOR must ensure transportation services are available 24 hours per day, 7 days per week, and every day of the year.
- 9.3 CONTRACTOR must be certified with Centers for Medicare and Medicaid Services (CMS) and Medi-Cal.
- 9.4 CONTRACTOR must have all staff complete and pass a criminal and drug background check clearance.
- 9.5 CONTRACTOR shall include an orientation program for all drivers/staff which encompasses training of all standards as specified within this Contract Agreement. All drivers/staff must show proof of orientation completion prior to performing services, and provide proof upon COUNTY requests.

**10.0 REPORTING REQUIREMENTS** -CONTRACTOR shall provide quarterly reports of the following:

- 10.1 **Trip Log** shall include but is not limited to the following:
  - a) Passenger/Patient Name;
  - b) Date/time of Request;
  - c) Date/time of Appointment;
  - d) Mode of transportation requested / mode authorized;
  - e) Schedule time of pickup / drop off;
  - f) Actual time of pick up / drop off;
  - g) Pick up location;

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

NEMT Solutions, LLC

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- h) Drop off location;
  - i) Driver Name;
  - j) Vehicle;
  - k) Odometer readings;
  - l) Mileage;
  - m) Number of successful and denied trips. Denied trips must include reason for denial.
  - n) Number of late arrival and late drop off by CONTRACTOR (report by minutes).
- 10.2 **Complaints Summary Reports-** Provide a list of all complaints and the resolution of those complaints. The report must include but not limited to the following:
- a) Passenger/Patient Name;
  - b) Driver Name;
  - c) Date;
  - d) Explanation of complaint;
  - e) Resolution of complaint.
- 10.3 **Driver Reports-** CONTRACTOR shall provide a roster of all drivers prior to the start of operations. The roster shall indicate, at a minimum, the driver's name, California driver's license number, social security number and each drivers work schedule. The driver roster shall be updated to reflect additions and deletions in drivers; maintained by CONTRACTOR personnel and provided to COUNTY on a quarterly basis, thereafter.
- 10.4 **Accident and Moving Violations Reports**
- 10.4.1 CONTRACTOR shall notify COUNTY immediately of any accident(s) resulting in driver or passenger injury or fatality while delivering services under this contract. CONTRACTOR shall file a written accident report with the COUNTY within seventy-two (72) hours of the accident and within

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

NEMT Solutions, LLC

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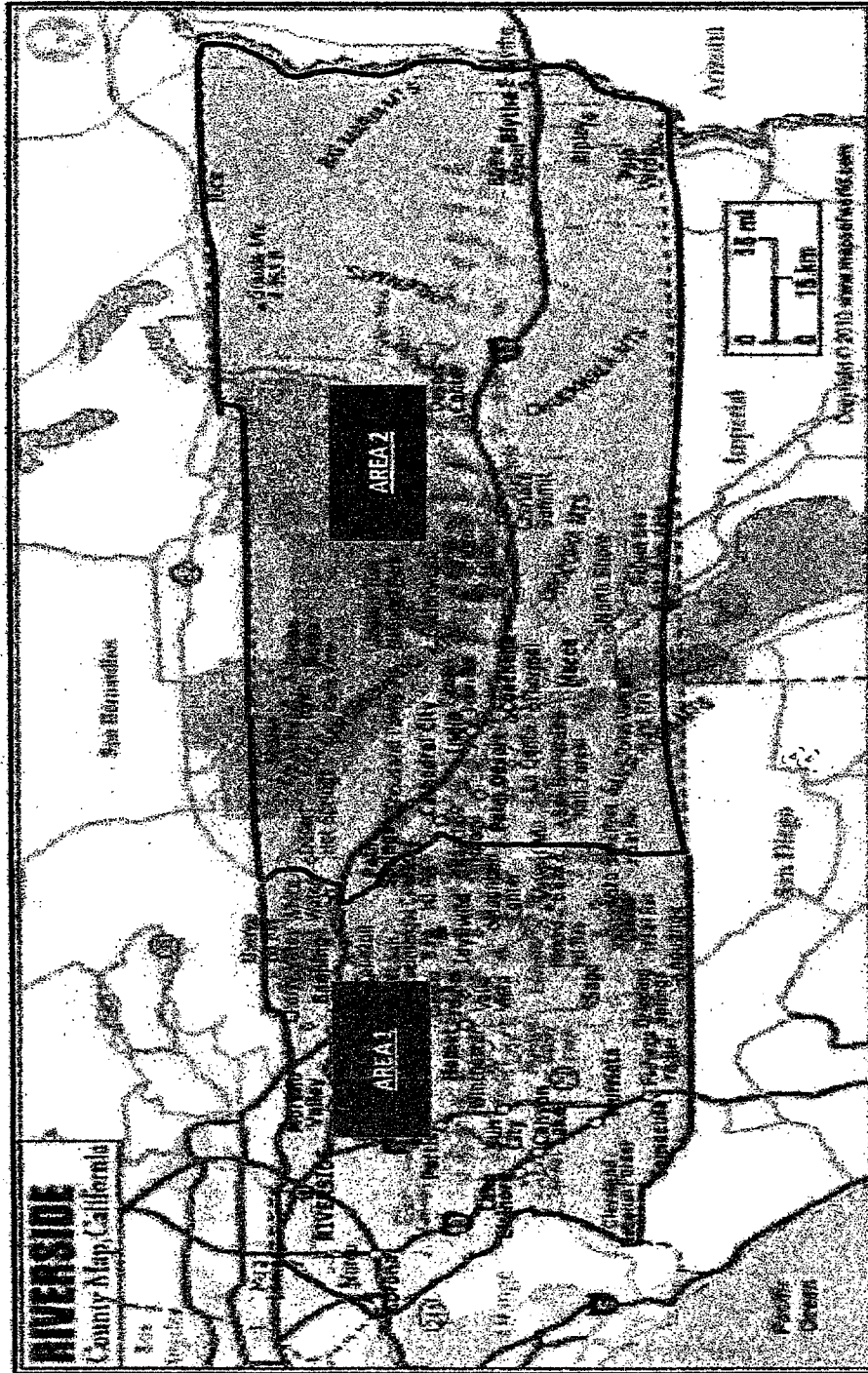
twenty-four (24) hours if the accident involved an injury. CONTRACTOR will cooperate with the COUNTY during any ensuing investigation. A police report is also required as supporting documentation. CONTRACTOR shall notify the COUNTY immediately of any moving violations that occur while delivering services under this contract. CONTRACTOR must provide a copy of the police report within ten (10) working days of the moving violation.

10.4.2 CONTRACTOR shall maintain copies of each accident report in the files of both the vehicle and the driver involved in the accident. Police reports associated with moving violations must be maintained in the file of the responsible driver.

- 10.5 **Vehicle Reports-** CONTRACTOR shall provide COUNTY with a listing of all vehicles placed in service for the performance of obligations under this contract prior to the start of operations. The list shall include for each vehicle the following:
- a) Manufacturer and model;
  - b) Model year;
  - c) Vehicle Identification Number (VIN);
  - d) Plate number; fleet number, if assigned;
  - e) Type of vehicle (i.e., car, minivan, litter van, wheelchair van or non-emergency ambulance). If non-emergency ambulance is used, CONTRACTOR must provide and show proof of Riverside County permit;
  - f) Proof of Insurance.

**SERVICE AREAS**  
Non-Emergency Medical Transportation Services

NEMT Solutions, LLC



**PAYMENT PROVISION**  
 Non-Emergency Medical Transportation Services

NEMT Solutions, LLC

The COUNTY will reimburse CONTRACTOR for services performed in accordance with the rates specified below.

The COUNTY is not responsible for any fees or costs incurred above or beyond these rates and shall have no obligation to purchase any specified amount of services or supplies/equipment.

DESCRIPTION	FLAT RATE
Base Charge for Transportation	\$23.00
Mileage Fee	\$1.75/mile
* Charges for other supplies/services rendered (i.e., night charge, wait per hour, no show)	\$20.00

- \* these charges must be authorized, verified and approved by COUNTY prior to CONTRACTOR billing.
- \* night charge begins after 6:00 p.m. (PST) and ends 6:00 a.m. (PST).

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and  
NEMT SOLUTIONS, LLC

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The HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the **Non-Emergency Medical Transportation Services** (the "Underlying Agreement") between the County of Riverside ("County") and **NEMT Solutions, LLC** ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the Contractor provides services to County, and in conjunction with the provision of such services certain protected health information ("PHI") and/or certain electronic protected health information ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor when a creator or recipient of, or when they have access to, PHI and/or ePHI of County, is a business associate as defined in the Privacy Rule; and,

WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to the covered entity, the additional security and privacy requirements of HITECH are applicable to business associates and must be incorporated into the business associate agreement, and a business associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy provisions; and,

WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

WHEREAS, the parties intend to enter into this Addendum to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to Contractor as a business associate of County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing services on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and  
NEMT SOLUTIONS, LLC

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**Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.

“Breach” when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402. For purposes of this definition, “compromises the security or privacy of PHI” means poses a significant risk of financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:

- (1) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.
  - (2) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
  - (3) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- B. “Data aggregation” has meaning given such term in 45 CFR §164.501.
- C. “Designated record set” as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
- D. “Electronic protected health information” (“ePHI”) as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- E. “Electronic health record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- F. “Health care operations” has the meaning given such term in 45 CFR §164.501.

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
**TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY**  
**and**  
**NEMT SOLUTIONS, LLC**

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- G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- H. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").
- M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2) on the HHS web site.
2. **Scope of Use and Disclosure by Contractor of County's PHI and/or ePHI.**
- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:
- (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,
  - (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:
    - (a) The disclosure is required by law; or,



**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
**TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY**  
**and**  
**NEMT SOLUTIONS, LLC**

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- (b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:
    - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
    - (ii) Notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached; and,
  - (3) Use PHI to provide data aggregation services relating to the health care operations of County pursuant to the Underlying Agreement or as requested by County; and,
  - (4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

**3. Prohibited Uses and Disclosures.**

- A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §§17935 and 17936. Contractor agrees:
  - (1) Not to use or disclose PHI for fundraising or marketing purposes, unless pursuant to the Underlying Agreement and as permitted by and consistent with the requirements of 42 USC §17936;
  - (2) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and  
NEMT SOLUTIONS, LLC

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restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,

- (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by 42 USC §17935(d)(2) and with the prior written consent of County. This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

**4. Obligations of County.**

- A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
- D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
- E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying Agreement.

**5. Obligations of Contractor.** In connection with the use or disclosure of PHI and/or ePHI, Contractor agrees to:

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.
- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
- C. Use appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and  
NEMT SOLUTIONS, LLC

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- D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
  - E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware.
  - F. Require any subcontractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
  - G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
  - H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
  - I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
  - J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
  - K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
  - L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI and electronic health record.** Provide access to PHI in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524. If Contractor uses or maintains electronic health records, Contractor shall, at the request of County, provide electronic health records in electronic format to enable County to fulfill its obligations under 42 USC §17935(e).

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and  
NEMT SOLUTIONS, LLC

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- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
- (1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
  - (2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
  - (3) Make available for County information required by this section for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
7. **Security of ePHI.** In the event Contractor needs to create, receive, or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §§164.314(a)(2)(i), and 164.306, Contractor shall:
- A. Implement the administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County as required by the Security Rule, including without limitations, each of the requirements of the Security Rule at 45 CFR §§164.308, 164.310, and 164.312;
  - B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
  - C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
  - D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
  - E. Ensure compliance by Contractor's workforce;

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and  
NEMT SOLUTIONS, LLC

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- F. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement reasonable appropriate safeguards to protect it;
- G. Report to County any security incident of which Contractor becomes aware; and,
- H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
- (1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
- (2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
- (a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
- (b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
- (c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
- (d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
- (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and  
NEMT SOLUTIONS, LLC

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- (f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §§ 164.404, 164.406 and 164.408.
- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.
- F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach.
9. **Hold Harmless/Indemnification.**
- A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum.

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
**TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY**  
**and**  
**NEMT SOLUTIONS, LLC**

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Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.

- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.
- D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.
10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.
11. **Termination.**
- A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and  
NEMT SOLUTIONS, LLC

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- (1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
- (2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.
- (3) If termination of the Underlying Agreement is not feasible, the non-breaching party may report the problem to the Secretary, and upon the non-breaching party's request, the breaching party at its own expense shall implement a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

**B. Effect of Termination.**

- (1) Upon termination of this Addendum, for any reason, Contractor shall return or destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.
- (2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

**12. General Provisions.**

- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.



**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and  
NEMT SOLUTIONS, LLC

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- D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.
- F. **Interpretation of Addendum.**
- (1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
  - (2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.
- G. **Notices to County.** All notifications required to be given by Contractor pursuant to the terms of this Addendum shall be in writing and delivered to the County by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability at the address listed below, or at such other address as County may hereafter designate. All notices provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

Name: Riverside County Regional Medical Center, Compliance Department

Title: Compliance and Privacy Officer

Address: 26520 Cactus Avenue, Moreno Valley, CA 92555

**PROFESSIONAL SERVICE AGREEMENT**

**for**

**NON-EMERGENCY MEDICAL TRANSPORTATION SERVICES**

**between**

**COUNTY OF RIVERSIDE**

**and**

**EXPRESS TRANSPORTATION SYSTEMS**

**(d/b/a INLAND EMPIRE PARATRANSIT SERVICES)**



**TABLE OF CONTENTS**

<b><u>SECTION HEADING</u></b>	<b><u>PAGE NUMBER</u></b>
1. Description of Services .....	3
2. Period of Performance .....	3
3. Compensation .....	4
4. Alteration or Changes to the Agreement .....	5
5. Termination.....	5
6. Ownership/Use of Contract Materials and Products .....	6
7. Conduct of Contractor .....	6
8. Inspection of Service: Quality Control/Assurance .....	7
9. Independent Contractor .....	7
10. Subcontract for Work or Services.....	8
11. Disputes .....	8
12. Licensing and Permits .....	8
13. Use by Other Political Entities.....	9
14. Non-Discrimination .....	9
15. Records and Documents .....	9
16. Confidentiality .....	10
17. Administration/Contract Liaison .....	10
18. Notices .....	11
19. Force Majeure.....	11
20. Hold Harmless/Indemnification.....	11
21. Insurance .....	12
22. General .....	15
Exhibit A-Scope of Service.....	18
Exhibit B- Payment Provisions .....	27
Attachment I-HIPAA Business Associate Attachment to the Agreement.....	28

This Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_, 2011, by and between **Express Transportation Systems (d/b/a Inland Empire Paratransit Services)**, (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, through its health care program, Riverside County Health Care, (herein referred to as "COUNTY"). The parties agree as follows:

**1. Description of Services**

**1.1** CONTRACTOR shall provide all services as outlined and specified in **Exhibit A**, Scope of Services, at the prices stated in **Exhibit B**, Payment Provisions, and adhere to the provisions specified in **Attachment I**, HIPAA Associate Addendum, all as attached hereto and incorporated herein.

**1.2** CONTRACTOR represents that it has the skills, experience and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

**1.3** CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in the Payment Provisions. CONTRACTOR is not to perform services or provide products outside of the Agreement.

**1.4** Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

**2. Period of Performance**

**2.1** The period of performance shall be effective as of January 1, 2012 and continue on a fiscal year, with the option to renew annually for one year continuing up to the program expiration date of December 31, 2013, unless terminated earlier. CONTRACTOR shall commence performance based on a specified time schedule agreed upon by both parties and shall diligently and continuously perform thereafter.

**3. Compensation**

**3.1** The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of **Exhibit B**, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed two hundred fifty thousand dollars (\$250,000) annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

**3.2** CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices for this Agreement and send originals and duplicate copies of invoices to:

**Riverside County Health Care**

**PO Box 11759**

**San Bernardino, CA 92423-1759**

- a) Each invoice shall contain a minimum of the following information: Patient Name, Patient ID#, Patient Date of Birth, Authorization #; Dates of Service(s), destination (to and from location), total number of miles, and total invoice total.
- b) Invoices shall be rendered monthly in arrears.

**3.3** The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

**3.4** COUNTY will mail CONTRACTOR payments to the following remit to address:  
**Express Transportation Systems, 3000 Date Street, Riverside, CA 92507**

**4. Alteration or Changes to the Agreement**

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

**5. Termination**

5.1. COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

**6. Ownership/Use of Contract Materials and Products**

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports or products without prior written authorization of the COUNTY.

**7. Conduct of Contractor**

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

**8. Inspection of Service; Quality Control/Assurance**

**8.1** All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

**8.2** CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

**9. Independent Contractor**

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this



Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

**10. Subcontract for Work or Services**

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

Should CONTRACTOR choose to subcontract, CONTRACTOR shall obtain prior approval from COUNTY and ensure all and any subcontractors abide by all the same terms and conditions stipulated in this Contract Agreement.

**11. Disputes**

**11.1** The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

**11.2** Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

**12. Licensing and Permits**

**12.1** CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and

exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

12.2 If non-emergency ambulance is used by CONTRACTOR, CONTRACTOR must provide and show proof of Riverside County permit upon COUNTY request.

**13. Use By Other Political Entities**

The CONTRACTOR agrees to extend the same pricing, terms and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

**14. Non-Discrimination**

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

**15. Records and Documents**

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five (5) years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

**16. Confidentiality**

**16.1** The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

**16.2** The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

**16.3** The CONTRACTOR in this Agreement is subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-91, enacted August 21, 1996, and the laws and regulations promulgated subsequent thereto. CONTRACTOR shall adhere to all terms and conditions as outlined and specified in **Attachment I**, attached hereto and incorporated herein.

**17. Administration/Contract Liaison**

Riverside County Regional Medical Center or designee shall administer this Agreement on behalf of Riverside County HealthCare (RCHC). Riverside County Regional Medical Center Contracts Administration is to serve as the liaison with CONTRACTOR in connection with this Agreement.

**18. Notices**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

**COUNTY OF RIVERSIDE**

Riverside County Regional Medical Center  
26520 Cactus Avenue  
Moreno Valley, CA 92555  
Attn: Contracts Administration

**CONTRACTOR**

Express Transportation Systems  
(d/b/a Inland Empire Paratransit Service)  
3000 Date Street  
Riverside, CA 92507  
Attn: General Manager

**CONTRACTOR REMIT TO ADDRESS:**

Express Transportation Systems  
3000 Date Street  
Riverside, CA 92507

**19. Force Majeure**

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

**20. Hold Harmless/Indemnification**

**20.1** Each party shall indemnify and hold harmless the other party from any and all claims, expenses, losses and obligations arising out of the indemnifying party's negligent acts or omissions or willful misconduct.

**20.2** With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein.

**20.2** CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

**20.3** The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

**20.4** In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

**20.5** CONTRACTOR's indemnification obligations shall also apply to any action or claim regarding actual or alleged intellectual property infringement related to any material or product provided to COUNTY pursuant to this Agreement. In the event of any such action or claim, CONTRACTOR shall provide immediate notice to COUNTY of the action or claim. CONTRACTOR may defend or settle the action or claim as CONTRACTOR deems appropriate; however, CONTRACTOR shall be required to obtain for COUNTY the right to continue to use the material or product (or a similar non-infringing material or product with the same function) on terms identical to those stated in this Agreement.

## **21. Insurance**

**21.1** Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

**21.2** Workers' Compensation: If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

**21.3 Commercial General Liability:** Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

**21.4 Vehicle Liability:** If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

**21.5 Professional Liability:** Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

**21.6 General Insurance Provisions - All lines:**

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceed \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of

operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of

liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

## **22. General**

**22.1** CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**22.2** Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

**22.3** In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

**22.4** CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

**22.5** CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims or encumbrances.



**22.6** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

**22.7** The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

**22.8** CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

**22.9** CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

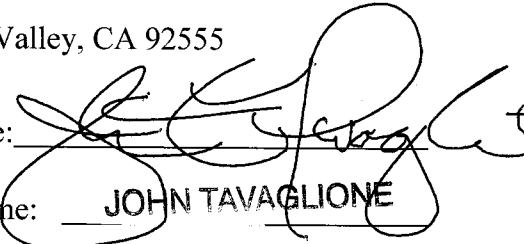
**22.10** CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

**22.11** This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**22.12** This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

**COUNTY:**

Riverside County  
26520 Cactus Avenue  
Moreno Valley, CA 92555

Signature:   
Print Name: JOHN TAVAGLIONE

Title: Chairperson

Dated: JAN 10 2012

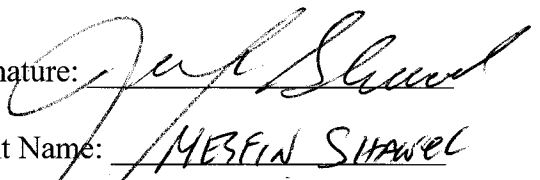
ATTEST:  
KECIA HARPER-IHEM, Clerk

By   
DEPUTY

FORM APPROVED COUNTY COUNSEL  
BY:   
NEAL R. KIPNIS DATE 12/29/11

**CONTRACTOR:**

Express Transportation Systems  
3000 Date Street  
Riverside, CA 92507

Signature:   
Print Name: MESFIN SHAWEL

Title: President / CEO

Dated: 12/19/2011

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

Express Transportation Systems (d/b/a Inland Empire Paratransit Service)

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CONTRACTOR is responsible for providing transportation services comprised of Specialized Medical Vehicles (SMV) and common carriers. These modes of transportation and their respective standards are described below in the scope of work.

CONTRACTOR shall use Litter Van(s) or Wheelchair Van(s) that meet applicable state and federal laws, regulations and standards, including Sections 51231.1 and 51231.2 of Title 22 of the California Code of Regulations.

**1.0 SPECIALIZED MEDICAL VEHICLES (SMV) -**

All specialized medical vehicles (SMV) also referred to as wheelchair vans / litter vans. These are vehicles that are equipped with permanently installed ramps and lifts and able to transport gurneys and wheelchairs as required. These SMV's must be in compliance with the American with Disabilities Acts (ADA) requirements, licensed and inspected annually by the Department of Motor Vehicles (DMV) and California Department of Transportation (Caltrans).

1.1 CONTRACTOR shall provide gurneys and wheelchairs as required.

**2.0 COMMON CARRIERS -**

A common carrier provides transportation other than ambulance and SMV. These vehicles do not have permanently installed ramps or lifts and are not certified for cot/stretchers transportation, however; are required to be licensed and inspected annually by the Department of Motor Vehicles (DMV).

**3.0 DRIVER STANDARDS -**

3.1 CONTRACTOR shall ensure that all drivers are legally licensed by the State of California to operate their assigned vehicle. CONTRACTOR shall also ensure that all drivers are competent in their driving habits, are courteous and helpful to all passengers, and are neat and clean in appearance. First aid and CPR training shall be maintained by drivers and attendants.

3.2 All drivers must be at least twenty-one (21) years of age and have an appropriate and unrestricted (with the exception of corrective lenses) current valid California driver's license.

**SCOPE OF WORK**

## Non-Emergency Medical Transportation Services

Express Transportation Systems (d/b/a Inland Empire Paratransit Service)

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- 3.3 Prior to serving as a driver each person shall have received all of the following:
- a) Complete and pass a criminal and drug background clearance check.
  - b) Basic Red Cross or equivalent training in First Aid and Cardio Pulmonary Resuscitation (CPR);
  - c) Have a radio and/or cell phone to contact dispatch center and 9-1-1 for emergencies;
  - d) Specific instructions on care of passengers in seizure; and
  - e) Specific instructions in the use of all ramps, lift equipment and restraint devices used by the CONTRACTOR.
- 3.4 Drivers shall not use litter van(s) or wheelchair van(s) as ambulance.
- 3.5 Drivers shall not use litter van(s) or wheelchair van(s) to transport passenger if: (a) the passenger requires any type of continuous medical monitoring; (b) the passenger's condition is one of which falls under the transportation protocols of the EMS Agency regulating ambulance providers.
- 3.6 Each driver shall receive refresher training and remain current at all times in Basic First Aid and CPR.
- 3.7 Drivers who currently have a suspended or revoked driver's license, commercial or other, are prohibited from driving for any purpose under this contract.
- 3.8 Drivers who receive citations and are convicted of two (2) moving violations and/or accidents related to transportation provided under this Agreement, where the driver was at fault during the full term of the contract, must be removed from service.
- 3.9 Drivers must report any citations they receive to the Contractor's management for recordkeeping and reporting to the COUNTY upon request.
- 3.10 CONTRACTOR is responsible for ensuring that driver standards are maintained at all times. This applies to all forms of transportation.
- 3.11 Any driver receiving two (2) or more complaints from passengers concerning standards in sub-section 1.1 within a five (5) business day period may not be

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

Express Transportation Systems (d/b/a Inland Empire Paratransit Service)

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utilized until corrective action is taken. All complaints must be documented and become a part of the driver's permanent record/file.

**4.0 DRIVER CONDUCT -**

- 4.1 No driver shall use or be under the influence of alcohol, narcotics, illegal drugs or drugs that impair ability to perform while on duty.
- 4.2 Smoking is prohibited in the vehicles while performing transportation service. "No Smoking" signs shall be visible to all passengers. CONTRACTOR shall require drivers contact their management immediately if passengers fail to comply with this prohibition. And at no time shall drivers smoke while in the vehicle or in the presence of any passenger/patient.
- 4.3 No driver shall touch any passenger except as appropriate and necessary to assist the passenger into or out of the vehicle, into a seat and to secure the seatbelt, as necessary to render first aid or assistance for which the driver has been trained or as indicated for gurney and wheelchair transport.
- 4.4 Drivers shall not wear any type of headphones or earphones at any time while on duty.
- 4.5 Drivers shall not use a cell phone or texting devices while driving.
- 4.6 Drivers shall maintain a comfortable interior cabin temperature at all times while vehicle is occupied by a passenger/patient.
- 4.7 All drivers must wear or have visible, an easily readable official company identification.
- 4.8 At no time shall drivers eat or consume any beverage while in the vehicle or while involved with or in the presence of any passenger/patient.
- 4.9 Drivers must exit the vehicle to open and close vehicle doors when passengers enter or exit the vehicle and provide assistance as necessary to or from the main door of the place of destination for those passenger/patients who require assistance.

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

Express Transportation Systems (d/b/a Inland Empire Paratransit Service)

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- 4.10 Drivers must properly identify and announce their presence at the entrance of the building at the specified pick-up location if a curbside pick-up is not apparent.
- 4.11 Drivers shall confirm, prior to allowing any vehicle to proceed, that wheelchairs or cot/stretchers are properly secured and that all passengers are properly seat-belted or secured/restrained in their wheelchair or cot/stretcher.
- 4.12 Drivers shall confirm, prior to vehicle departure that the delivered passenger has safely arrived and is inside the destination.
- 4.13 Any driver receiving two (2) or more complaints from passengers/patients concerning cleanliness, courtesies, or other deficiencies noted in this section within a five (5) business day period may not be utilized until corrective action is taken. All complaints must be documented and become a part of the driver's permanent record/file.

**5.0 VEHICLE STANDARDS -**

- 5.1 CONTRACTOR must ensure Litter Van(s) or Wheelchair Van(s) meet applicable state and federal laws, regulations and standards, including Sections 51231.1 and 51231.2 of Title 22 of the California Code of Regulations.
- 5.2 CONTRACTOR must be currently certified by the California Department of Motor Vehicles (DMV) and the California Department of Transportation (Caltrans) and must be able to show proof (and provide copies of certification), upon COUNTY request.
- 5.3 CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

Express Transportation Systems (d/b/a Inland Empire Paratransit Service)

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Insureds. Additional insurance requirements as part of this service; is stipulated in the Contract Agreement, Section 21 Insurance.

- 5.4 CONTRACTOR must ensure that all vehicles and vehicle equipment adequately meet the requirements as specified in this scope of work. Vehicles and all components must comply with or exceed the manufacturers, state and federal, safety and mechanical operating and maintenance standards for the particular vehicles and models used under this contract. Vehicles must comply with all applicable federal laws including the Americans with Disabilities Act (ADA) regulations.
- 5.5 Any vehicles found deficient with any State or Federal regulations or in the following areas must be immediately removed from service:
- a) ADA regulations;
  - b) Scope of work requirements;
  - c) Department of Motor Vehicles (DMV) licensing requirements;
  - d) If overall condition of the vehicles creates a health or safety hazard for the vehicle occupants;
  - e) Any vehicle receiving two (2) or more legitimized complaints from passengers concerning cleanliness, temperature deficiencies, or other deficiencies within a five (5) day period must be removed from service until vehicles is inspected and appropriate corrective actions taken. Such actions must be documented and become a part of the Contractor's records for County review (upon request).

**6.0 PICK UP AND DELIVERY REQUIREMENTS -**

- 6.1 CONTRACTOR must ensure services are available 24 hours per day, 7 days per week, and every day of the year.
- 6.2 Arrival before the scheduled pick-up time is permitted by the CONTRACTOR; however, a passenger/patient is not required to board the vehicle before the scheduled pick-up time. The driver is not required to wait more than 15 minutes after the scheduled pick up time.

**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

Express Transportation Systems (d/b/a Inland Empire Paratransit Service)

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- 6.3 Drivers shall deliver passengers/patients to their destinations on time for their scheduled appointments.
- 6.4 If delay occurs in the course of picking up scheduled passengers/patients, CONTRACTOR must contact proposed passengers/patients at their pick-up points to inform them of the delay in arrival of vehicle and related schedule, in addition to contacting the facility (pick up point). The driver must advise scheduled passengers/patients and the facility of alternate pick up arrangement when appropriate.

**7.0 BACK-UP VEHICLES -**

- 7.1 CONTRACTOR shall be responsible for arranging for back-up vehicles and/or personnel when notified by COUNTY or the passenger that a vehicle is excessively late, is otherwise unavailable for services, or when specifically requested by COUNTY. The vehicle is excessively late if it is twenty (20) minutes late in meeting its assigned schedule.
- 7.2 A back-up vehicle for an excessively late vehicle or an otherwise unavailable vehicle must be in place within thirty (30) minutes after a vehicle has been deemed unavailable for any reason.

**8.0 SERVICE AREA(S) -**

- 8.1 CONTRACTOR must serve the entire County of Riverside (Banning, Beaumont, Blythe, Calimesa, Canyon Lake, Cathedral City, Coachella, Corona, Desert Hot Springs, Eastvale, Hemet, Indian Wells, Indio, Jurupa Valley, Lake Elsinore, La Quinta, Mecca, Menifee, Moreno Valley, Murrieta, Norco, Palm Desert, Palm Springs, Perris, Rancho Mirage, Riverside, San Jacinto, Temecula and Wildomar and all other unincorporated areas of Riverside County).

**9.0 GENERAL ADMINISTRATIVE REQUIREMENTS -**

- 9.1 CONTRACTOR shall staff a call/dispatch center with live customer service representative(s) 24 hours per day, 7 days per week.



**SCOPE OF WORK**  
Non-Emergency Medical Transportation Services

Express Transportation Systems (d/b/a Inland Empire Paratransit Service)

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- 9.2 CONTRACTOR must ensure transportation services are available 24 hours per day, 7 days per week, and every day of the year.
- 9.3 CONTRACTOR must be certified with Centers for Medicare and Medicaid Services (CMS) and Medi-Cal.
- 9.4 CONTRACTOR must have all staff complete and pass a criminal and drug background check clearance.
- 9.5 CONTRACTOR shall include an orientation program for all drivers/staff which encompasses training of all standards as specified within this Contract Agreement. All drivers/staff must show proof of orientation completion prior to performing services, and provide proof upon COUNTY requests.

**10.0 REPORTING REQUIREMENTS** -CONTRACTOR shall provide quarterly reports of the following:

- 10.1 **Trip Log** shall include but is not limited to the following:
  - a) Passenger/Patient Name;
  - b) Date/time of Request;
  - c) Date/time of Appointment;
  - d) Mode of transportation requested / mode authorized;
  - e) Schedule time of pickup / drop off;
  - f) Actual time of pick up / drop off;
  - g) Pick up location;
  - h) Drop off location;
  - i) Driver Name;
  - j) Vehicle;
  - k) Odometer readings;
  - l) Mileage;

**SCOPE OF WORK**

## Non-Emergency Medical Transportation Services

Express Transportation Systems (d/b/a Inland Empire Paratransit Service)

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- m) Number of successful and denied trips. Denied trips must include reason for denial.
  - n) Number of late arrival and late drop off by CONTRACTOR (report by minutes).
- 10.2 **Complaints Summary Reports-** Provide a list of all complaints and the resolution of those complaints. The report must include but not limited to the following:
- a) Passenger/Patient Name;
  - b) Driver Name;
  - c) Date;
  - d) Explanation of complaint;
  - e) Resolution of complaint.
- 10.3 **Driver Reports-** CONTRACTOR shall provide a roster of all drivers prior to the start of operations. The roster shall indicate, at a minimum, the driver's name, California driver's license number, social security number and each drivers work schedule. The driver roster shall be updated to reflect additions and deletions in drivers; maintained by CONTRACTOR personnel and provided to COUNTY on a quarterly basis, thereafter.
- 10.4 **Accident and Moving Violations Reports**
- 10.4.1 CONTRACTOR shall notify COUNTY immediately of any accident(s) resulting in driver or passenger injury or fatality while delivering services under this contract. CONTRACTOR shall file a written accident report with the COUNTY within seventy-two (72) hours of the accident and within twenty-four (24) hours if the accident involved an injury. CONTRACTOR will cooperate with the COUNTY during any ensuing investigation. A police report is also required as supporting documentation. CONTRACTOR shall notify the COUNTY immediately of any moving violations that occur while delivering services under this contract. CONTRACTOR must provide

**SCOPE OF WORK**

Non-Emergency Medical Transportation Services

Express Transportation Systems (d/b/a Inland Empire Paratransit Service)

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a copy of the police report within ten (10) working days of the moving violation.

10.4.2 CONTRACTOR shall maintain copies of each accident report in the files of both the vehicle and the driver involved in the accident. Police reports associated with moving violations must be maintained in the file of the responsible driver.

10.5 **Vehicle Reports-** CONTRACTOR shall provide COUNTY with a listing of all vehicles placed in service for the performance of obligations under this contract prior to the start of operations. The list shall include for each vehicle the following:

- a) Manufacturer and model;
- b) Model year;
- c) Vehicle Identification Number (VIN);
- d) Plate number; fleet number, if assigned;
- e) Type of vehicle (i.e., car, minivan, litter van, wheelchair van or non-emergency ambulance). If non-emergency ambulance is used, CONTRACTOR must provide and show proof of Riverside County permit;
- f) Proof of Insurance.

**PAYMENT PROVISION**  
Non-Emergency Medical Transportation Services

Express Transportation Systems (d/b/a Inland Empire Paratransit Service)

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The COUNTY will reimburse CONTRACTOR for services performed in accordance with the rates specified below.

The COUNTY is not responsible for any fees or costs incurred above or beyond these rates and shall have no obligation to purchase any specified amount of services or supplies/equipment.

<b>DESCRIPTION</b>	<b>FLAT RATE</b>
Base Charge for Transportation	\$25.00
Mileage Fee	\$3.25/mile
Charges for other supplies/services rendered	\$10.00

\* these charges must be authorized, verified and approved by COUNTY prior to CONTRACTOR billing.

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and

EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)

The HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the **Non-Emergency Medical Transportation Services** (the "Underlying Agreement") between the County of Riverside ("County") and **Express Transportation Systems (d/b/a Inland Empire Paratransit Services)** ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the Contractor provides services to County, and in conjunction with the provision of such services certain protected health information ("PHI") and/or certain electronic protected health information ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor when a creator or recipient of, or when they have access to, PHI and/or ePHI of County, is a business associate as defined in the Privacy Rule; and,

WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to the covered entity, the additional security and privacy requirements of HITECH are applicable to business associates and must be incorporated into the business associate agreement, and a business associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy provisions; and,

WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

WHEREAS, the parties intend to enter into this Addendum to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to Contractor as a business associate of County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing services on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and

EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)

**Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.

“Breach” when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402. For purposes of this definition, “compromises the security or privacy of PHI” means poses a significant risk of financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:

- (1) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.
  - (2) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
  - (3) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- B. “Data aggregation” has meaning given such term in 45 CFR §164.501.
- C. “Designated record set” as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
- D. “Electronic protected health information” (“ePHI”) as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- E. “Electronic health record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- F. “Health care operations” has the meaning given such term in 45 CFR §164.501.

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and

EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)

- G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- H. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").
- M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2) on the HHS web site.
2. **Scope of Use and Disclosure by Contractor of County's PHI and/or ePHI.**
- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:
- (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,
  - (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:
    - (a) The disclosure is required by law; or,

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
**TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY**  
**and**  
**EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)**

- (b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:
  - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
  - (ii) Notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached; and,
- (3) Use PHI to provide data aggregation services relating to the health care operations of County pursuant to the Underlying Agreement or as requested by County; and,
- (4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

**3. Prohibited Uses and Disclosures.**

- A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §§17935 and 17936. Contractor agrees:
  - (1) Not to use or disclose PHI for fundraising or marketing purposes, unless pursuant to the Underlying Agreement and as permitted by and consistent with the requirements of 42 USC §17936;
  - (2) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this



**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
**TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY**  
**and**

**EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)**

restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,

- (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by 42 USC §17935(d)(2) and with the prior written consent of County. This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

**4. Obligations of County.**

- A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
- D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
- E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying Agreement.

**5. Obligations of Contractor.** In connection with the use or disclosure of PHI and/or ePHI, Contractor agrees to:

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.
- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
- C. Use appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
**TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY**  
**and**

**EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)**

- D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
  - E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware.
  - F. Require any subcontractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
  - G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
  - H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
  - I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
  - J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
  - K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
  - L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI and electronic health record.** Provide access to PHI in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524. If Contractor uses or maintains electronic health records, Contractor shall, at the request of County, provide electronic health records in electronic format to enable County to fulfill its obligations under 42 USC §17935(e).

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and

**EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)**

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- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
- (1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
  - (2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
  - (3) Make available for County information required by this section for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
7. **Security of ePHI.** In the event Contractor needs to create, receive, or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §§164.314(a)(2)(i), and 164.306, Contractor shall:
- A. Implement the administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County as required by the Security Rule, including without limitations, each of the requirements of the Security Rule at 45 CFR §§164.308, 164.310, and 164.312;
  - B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
  - C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
  - D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
  - E. Ensure compliance by Contractor's workforce;

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and

**EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)**

- F. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement reasonable appropriate safeguards to protect it;
- G. Report to County any security incident of which Contractor becomes aware; and,
- H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
8. **Breach of Unsecured PHI**. In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification**. Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
- (1) **Breaches treated as discovered**. A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
- (2) **Content of notification**. The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
- (a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
- (b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
- (c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
- (d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
- (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and  
EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)

- (f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §§ 164.404, 164.406 and 164.408.
- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.
- F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach.
9. **Hold Harmless/Indemnification.**
- A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum.

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and

**EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)**

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- Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.
- D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.
10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.
11. **Termination.**
- A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and  
EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)

- (1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
- (2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.
- (3) If termination of the Underlying Agreement is not feasible, the non-breaching party may report the problem to the Secretary, and upon the non-breaching party's request, the breaching party at its own expense shall implement a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

**B. Effect of Termination.**

- (1) Upon termination of this Addendum, for any reason, Contractor shall return or destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.
- (2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

**12. General Provisions.**

- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.

**HIPAA BUSINESS ASSOCIATE ADDENDUM**  
TO THE AGREEMENT BETWEEN RIVERSIDE COUNTY  
and

EXPRESS TRANSPORTATION SYSTEMS (d/b/a INLAND EMPIRE PARATRANSIT SERVICES)

- D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.
- F. **Interpretation of Addendum.**
- (1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
  - (2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.
- G. **Notices to County.** All notifications required to be given by Contractor pursuant to the terms of this Addendum shall be in writing and delivered to the County by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability at the address listed below, or at such other address as County may hereafter designate. All notices provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

Name: Riverside County Regional Medical Center, Compliance Department

Title: Compliance and Privacy Officer

Address: 26520 Cactus Avenue, Moreno Valley, CA 92555