



#### Agenda

Olivette City Council Meeting  
September 13, 2016  
7:00 PM  
Council Chambers of City Hall  
9473 Olive Boulevard  
Olivette, MO 63132

1. Roll Call
2. Communications
3. City Manager's Report  
City Manager Sondag will give a verbal report at the September 13, 2016 meeting.
4. City Council Reports  
City Council Members will give verbal reports at the September 13, 2016 meeting.
5. Hearing From Citizens  
  
Documents:  
  
[HEARING FROM CITIZENS.PDF](#)
6. Bill #2817 - An Ordinance Fixing The Annual Rate Of Tax Levy For 2016 On All Property Within The City Of Olivette, Providing For The Extension Of Said Taxes On The Books Of The Collector By The County Clerk And Providing For The Collection Thereof - Public Hearing And Second Reading  
An Ordinance to formally set tax rates for the upcoming 2016 tax billings. These rates are evaluated by the Missouri State Auditor for conformance with state statutes. This bill is presented for a public hearing and second reading.  
  
Documents:  
  
[2016 TAX RATE ORDINANCE.PDF](#)
7. Bill #2820 - An Ordinance Repealing Chapter 125, Article VI Olivette On The Go Committee, In Its Entirety - Second Reading  
The Council is asked to approve an ordinance that would repeal the Olivette On the Go Committee. Second reading and motion to approve.  
  
Documents:  
  
[OLIVETTE ON THE GO.PDF](#)
8. Resolution 2016-120: A Resolution Authorizing The City Manager To Enter Into An Agreement With EMS Management And Consultants For Professional Services For The Purpose Of Providing Ambulance Billing Service And Reporting Software In The City Of Olivette  
A request for proposals for Ambulance Billing Service and electronic Patient Care Reporting (ePCR) software was published on July 29th and 3 responses were received by

the August 12, 2016 bid opening deadline. See the attached memo and additional information on responders.

Documents:

[EMS BILLING.PDF](#)

9. Party In The Park – Special Events Liquor License – Fallon's Bar And Grill  
The annual special event, Party in the Park, sponsored by the City of Olivette will be held on Friday, September 23rd at Warson Park from 6:30-10 pm. Fallon's Bar and Grill, located in Olivette, has applied for a special event liquor license sell beer and wine, for consumption on site.

Documents:

[SPECIAL EVENTS LIQUOR LICENSE - PIP.PDF](#)

10. Request For Document Destruction - Finance Department  
The Finance Department is requesting to securely destroyed documents according retention classifications adopted with Ordinance #2552. Record classification and a description of the items are contained within the accompanying memo.

Documents:

[SEPT 2016 DOCUMENT DESTRUCTION.PDF](#)

11. Review And Approval Of The Minutes Of The August 23, 2016 City Council Meeting  
The City Council is asked to review and approve the minutes of the previous City Council meeting.

Documents:

[DRAFT COUNCIL MINUTES 2016-08-23.PDF](#)

12. Hearing From Citizens (Part 2)

Documents:

[HEARING FROM CITIZENS - PART 2.PDF](#)

13. City Attorney's Report  
City Attorney Paul Martin will give a verbal report at the September 13, 2016 City Council meeting.

14. Adjournment

**AGENDA ITEMS WILL NOT NECESSARILY BE DISCUSSED IN ORDER. IF YOU HAVE ANY QUESTIONS, PLEASE CALL CITY HALL AT (314) 993-0444**

Individuals desiring to speak at the meeting are asked to fill out speaker cards available on the speaker's podium and submit the cards to the City Clerk prior to the call to order and roll call. Speakers are respectfully asked to hold comments to three (3) minutes to allow all those who wish a chance to speak. Speakers will be called on to speak during the "Hearing from Citizens" portion of the meeting. Please address all comments to the Mayor.

The City of Olivette hereby advises the public, employees and qualified job applicants that they are afforded an equal opportunity to participate in the programs and service of the City regardless of race, color, religion, sex, age, disability, familial status, national origin or political affiliation. If you

race, color, religion, sex, age, disability, familial status, national origin or political affiliation. If you are a person with a disability and have special needs, please call Barbara Sondag, City Manager at 314.993.0444 as soon as possible but no later than one day prior to the event or call 314.993.3610 VOICE TDD, 1.800.735.2466 RELAY MISSOURI. Thank you.

Please note that the City Council may adjourn to closed session pursuant to the Revised Statutes of the State of Missouri to discuss legal, confidential or privileged attorney-client matters pursuant to Section 610.021(1), real estate matters pursuant to Section 610.021(2), personnel matters pursuant to 610.021(3), audit matters pursuant to Section 610.021(17), or for any other reason allowed by Missouri law.

The news media may obtain copies of this notice by contacting:

Barbara Sondag  
City Manager  
9473 Olive Boulevard  
Olivette, Missouri 63132  
(314) 993-0444

Posted this 9th day of September, 2016 at 11:00 AM.

**Myra G. Bennett**

Myra G. Bennett, CMC/MPCC  
City Clerk  
City of Olivette



## ***CITY COUNCIL AGENDA SUBMISSION***

### **Agenda Item:**

Hearing from Citizens

### **Description:**

Olivette citizens and businesses express concerns, discuss issues, and make requests of the City Council's assistance in getting matters resolved.

The Mayor and City Council would like to remind the audience of the following:

1. The purpose is to hear your concerns, issues, and questions.
2. Cards submitted after the beginning of 1<sup>st</sup> "Hearing from Citizens" will not be called until the 2<sup>nd</sup> "Hearing from Citizens".
3. The Chair has discretion to allow individuals to speak without previously submitting a card; however, those individuals will also need to complete a card.
4. Personal attacks of Council Member, Staff, and/or individuals are not permissible.
5. Any question should be directed to the Chair and only the Chair.
6. Questions concerning agenda items may be addressed by Council or staff at the time the agenda item is discussed.
7. Questions that are not pertaining to agenda items may receive an answer by the method of your choice; indicated at the bottom of the submittal cards.
8. Profanity is not allowed.
9. Campaigning and electioneering are not permitted.

"Hearing from Citizens" is not intended to be an open discussion. It is intended to provide an opportunity for citizens to be heard at official meetings.

When called, please step to the podium; state your name and your address before addressing your subject matter.

Each person has up to three (3) minutes to speak. Should your time elapse, you are welcome to continue at the second hearing from citizen's session again, for up to 3 minutes.



**CITY COUNCIL AGENDA SUBMISSION**  
**September 13, 2016**

**Agenda Item:**

Bill 2817 - An Ordinance Fixing the Annual Rate of Tax Levy for 2016 on all Property Within the City of Olivette, Providing For the Extension of Said Taxes on the Books of the Collector by the County Clerk and Providing for the Collection Thereof – Public Hearing and Second Reading

**Description:**

Hold a public hearing reading of an ordinance that will set the annual rate of tax levy for 2016. The ordinance and accompanying public notice shows the breakdown of tax rates.

**Recommended Action:**

Hold public hearing to discuss 2016 tax rates.  
Approve Bill #2817 as presented.

**Attachments:**

1. 2016 Tax Rate Ordinance
2. 2016 Tax Rate Public Notice as published

**Funding Request:**

None

**Submitted by:**

*Darren Mann, CPA*  
**DEPARTMENT HEAD**

**AN ORDINANCE FIXING THE ANNUAL RATE OF TAX LEVY FOR 2016 ON ALL PROPERTY WITHIN THE CITY OF OLIVETTE, PROVIDING FOR THE EXTENSION OF SAID TAXES ON THE BOOKS OF THE COLLECTOR BY THE COUNTY CLERK AND PROVIDING FOR THE COLLECTION THEREOF.**

WHEREAS, the fiscal year of the City of Olivette commences July 1, 2016 and there has heretofore been prepared a proposed budget for fiscal year and a public hearing held thereon, and thereafter, a budget for such fiscal year has been adopted; and

WHEREAS, pursuant to Section 137.245, of the Revised Statutes of Missouri, as amended, there has been forwarded to the City by the Assessor of St. Louis County, the assessed valuation of residential real property, commercial real property, personal property and other tangible property located within the City of Olivette; and

WHEREAS, a public hearing on the matter of the tax rate for 2016 has been held upon due notice thereof, and all comments made at the public hearing have been duly considered by the Council; and

WHEREAS, the Council has determined that the tax rate for 2016, as hereinafter set forth, is required to produce substantially the revenues required in the FY 2016-2017 budget, to be derived from the property tax rate;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OLIVETTE, ST. LOUIS COUNTY, MISSOURI, as follows:

Section 1: There is hereby levied on all “residential property” (as that term is used and defined in Section 137.016, of the Revised Statutes of Missouri, as amended) within the corporate limits of Olivette a tax rate of one dollar and twenty-seven and five-tenth cents (\$1.275) on each \$100 assessed valuation of residential property as shown on the assessment books of the County of St. Louis, to be allocated for the current fiscal year as follows: sixty-two and six-tenths cents (\$.626) for general municipal purposes, twenty-two and nine-tenth cents (\$.229) for the pension fund, and forty-two and zero-tenths for debt service (\$.420).

Section 2: There is hereby levied on all “utility, industrial, commercial, railroad and other real property” (as that term is used and defined in Section 137.016, of the Revised Statutes of Missouri, as amended) within the corporate limits of Olivette a tax rate of one dollar and forty-three and eight-tenths cents (\$1.438) on each \$100 assessed valuation of utility, industrial, commercial, railroad and other real property as shown on the assessment books of the County of St. Louis, to be allocated for the current fiscal year as follows: seventy-six and eight-tenths cents (\$.768) for general municipal purposes, twenty-five cents (\$.250) for the pension fund, and forty-two cents for debt service (\$.420).

Section 3: There is hereby levied on all personal property within the corporate limits of Olivette a tax rate of one dollar and forty-four and one-tenth cents (\$1.441) on each \$100 assessed valuation of personal property as shown on the assessment books of the County of St. Louis, to be allocated for the current fiscal year as follows: Seventy seven one-tenth cents (\$.771) for general municipal purposes, twenty-five cents (\$.250) for the pension fund, and forty-two cents for debt service (\$.420).

Section 4: The County Clerk of St. Louis County, Missouri is hereby authorized to extend on the books of the collector the amount of taxes due and collectible according to the rates set forth in Section 1 through 3 of this Ordinance on all property (real, personal and mixed) within the corporate limits of the City of Olivette, St. Louis County, Missouri.

Section 5: The collection of the tax so extended shall be enforced in the same manner and under the same rules and regulations as may be provided by law for collecting and enforcing the payment of state and county taxes.

Section 6: The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Council would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 7: This ordinance shall take effect and shall be in effect from and after its passage and approval as provided by law.

**Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2016.**

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**Mayor Ruth Springer**

**ATTEST:**

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**Myra Bennett, CMC/MRCC  
City Clerk  
City of Olivette**

# The Countian Public Notices

## Government

### Financials and Budgets

**NOTICE OF PROPERTY TAX PUBLIC HEARING  
CITY OF OLIVETTE  
ST. LOUIS COUNTY, MISSOURI**

Notice is hereby given that the City of Olivette will hold a public hearing on September 13, 2016 at 7:00 PM at the Olivette City Hall Council Chambers, 9473 Olive Blvd., Olivette, Missouri, on the property tax rate proposed to be set by the City of Olivette for 2016.

<u>ASSESSED VALUATION</u>	<u>Valuation As of 7/01/16</u>
Real Estate-Residential	\$ 164,533,890
Real Estate-Commercial	51,482,850
Real Estate - Railroad & Utility Commercial	2,278,810
Personal Property	31,367,170
Personal Property - Railroad & Utility	458,128
	<u>\$ 250,120,848</u>

<u>FUND</u>	<u>Property Tax Revenue FY 2016-2017</u>	<u>2016 Proposed Tax Rates</u>
General-Residential	\$ 1,029,982	\$0.626
Pension-Residential	376,783	\$0.229
Debt Service - Residential	691,042	\$0.420
Total Residential Real EstateTax rate	<u>\$ 2,097,807</u>	<u>\$1.275</u>
General - Commercial	\$ 412,890	\$0.768
Pension - Commercial	134,404	\$0.250
Debt Service - Commercial	225,799	\$0.420
Total Commercial Real Estate Tax Rate	<u>\$ 773,093</u>	<u>\$1.438</u>
General-Personal Property	\$ 245,373	\$0.771
Pension - Personal Property	79,563	\$0.250
Debt Service - Personal Property	133,666	\$0.420
Total Personal Property Tax Rate	<u>\$ 458,603</u>	<u>\$1.441</u>
Total General Fund	\$ 1,688,245	
Total Pension Fund	590,750	
Total Debt Service	1,050,508	
	<u>\$ 3,329,502</u>	

**TAX RATE SUBJECT TO CHANGE BASED ON POST BOARD OF EQUALIZATION CHANGES**

This tax levy is on the assessments for the year of 2016 as certified by St. Louis County as of July 1, 2016. Any person desiring to be heard is invited to attend said hearing and to express his or her views on the above matter. If you are a person with a disability or have special needs in order to participate in this public hearing, please contact Myra Bennett no later than September 12, 2016.

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314-993-0444 Voice  
314-993-3610 TDD  
St. Louis County, MO August 10, 2016  
11138051 County Aug 12, 2016



**CITY COUNCIL AGENDA SUBMISSION**  
**September 13, 2016**

**Agenda Item:**

Bill 2820 – An Ordinance Repealing Chapter 125, Article VI: Olivette on the Go Committee, in its entirety.

**Description:**

The Council is asked to hold a second reading of an ordinance that repeals Chapter 125, Article VI: Olivette On the Go in its entirety. Over the past several years it has become increasingly difficult to recruit and retain the number of volunteers necessary to serve on the Olivette On the Go Committee. After much discussion and debate, the Council is asked to hold a first reading of an ordinance that would eliminate the committee. The Park and Recreation Commission is asked to investigate alternative community festivals and/or activities and to bring their recommendations back to the Council.

**Recommended Action:**

Hold Second Reading

Motion to approve Bill 2820 – an ordinance repealing Chapter 125, Article VI: Olivette On the Go Committee, in its entirety.

**Attachments:**

1. Ordinance

**Funding Request:** N/A

**Submitted by:**

*Barbara Sondag*  
**CITY MANAGER**

**BILL NO. 2820**

**ORDINANCE NO.**

**AN ORDINANCE REPEALING CHAPTER 125, ARTICLE VI: OLIVETTE ON THE GO COMMITTEE, IN ITS ENTIRETY.**

**WHEREAS**, Chapter 125, Article VI: Olivette On the Go Committee, Sections 125.180-125.195, was adopted in July of 2010, and

**WHEREAS**, over the past several years finding volunteers to serve on the Committee has become more difficult, and

**WHEREAS**, the Olivette City Council desires to offer community events that meet the desires of the community, and

**WHEREAS**, the City Council is instructing the Park and Recreation Commission, in conjunction with the Park Master Plan, to investigate alternative community events and to bring recommendations back to the Council at the Plan's conclusion.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OLIVETTE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS**

**SECTION 1.** Chapter 125, Article VI: Olivette On the Go Commission Sections 125.180 – 125.195 shall be repealed in its entirety and the remaining sections shall be renumbered accordingly.

**SECTION 2. BE IT FURTHER ORDAINED THAT** this ordinance shall become effective from and after its adoption according to law.

**PASSED THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2016**

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**MAYOR RUTH SPRINGER**

**ATTEST:**

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**CITY CLERK MYRA G. BENNETT**

Article VI  
Olivette On The Go Committee

*Section 125.180 Committee Established.*

~~[Ord. No. 2430 §1, 7-13-2010; Ord. No. 2504 §§1—3, 9-24-2013]~~

There is hereby established the Olivette On the Go Committee of the City of Olivette, which shall possess all of the powers and be subject to all of the responsibilities imposed upon it by law, the ordinances of the City and the directions of Council.

*Section 125.185 Committee Membership.*

~~[Ord. No. 2430 §1, 7-13-2010; Ord. No. 2504 §§1—3, 9-24-2013]~~

- A. ~~The Committee shall be composed of a minimum of seven (7) voting members appointed by the City Council for three-year terms. If the number of members exceeds the minimum numbers noted above, the Committee shall be comprised of an odd number of members. Members shall be residents or business owners in the City of Olivette; however, up to two (2) members may be non-residents. Non-residents shall be non-voting members of the Committee. [Ord. No. 2533 §1, 10-28-2014]~~
- B. ~~The City Council shall appoint members to the Olivette On the Go Committee for specified terms ending on the calendar date of November 1. Each member of the Committee shall serve until a successor is appointed and qualified. [Ord. No. 2533 §1, 10-28-2014]~~
- C. ~~The Parks and Recreation Director shall serve as an ex officio, non-voting member of the Committee.~~
- D. ~~A designated member of the City Council shall serve as an ex officio, non-voting member of the Committee.~~

*Section 125.190 Committee Officers and Procedures.*

~~[Ord. No. 2430 §1, 7-13-2010; Ord. No. 2504 §§1—3, 9-24-2013]~~

- A. ~~The Committee shall elect from among its membership a Chair, a Vice Chair and a Secretary, each of whom shall serve for a one-year term and may be reelected.~~
- B. ~~The Committee shall abide by Missouri's Open Meetings and Records Act, Sections 610.010, RSMo., et seq., as may be amended from time to time. No action shall be taken or recommendation made by the Committee to the Council except by a vote of at least a majority of its members. The Committee shall otherwise abide by the procedures established in Scott Foresman newly revised Robert's Rules of Order, except as otherwise may be provided by law.~~

*Section 125.195 Committee Responsibilities.*

~~[Ord. No. 2430 §1, 7-13-2010; Ord. No. 2504 §§1—3, 9-24-2013]~~

- A. ~~Duties and responsibilities of the Olivette on the Go Committee shall include, but not be limited to:~~

1. ~~Planning and executing a festival for the City of Olivette to facilitate community unity and enjoyment, provide a wholesome family and community opportunity for enjoyment and community spirit, and possibly raise funds for worthwhile community projects and activities.~~
2. ~~Planning and executing activities and events that showcase talent, community activities and businesses and organizations in the City of Olivette during the festival.~~
3. ~~Making recommendations to City Council regarding a detailed plan for the festival, including budgets and funding, entertainment, events and activities, vendors, event management, relationships with operating City departments, assignments of responsibilities, recruitment of volunteers and the dates and duration of the festival.~~
4. ~~Working with City Council and City staff in executing the adopted festival plan, including assignment of responsibilities and coordination of volunteers.~~
5. ~~Working with City staff in tracking and managing festival finances and proceeds.~~
6. ~~Making recommendations to City Council regarding approval and execution of contracts required to execute the festival plan.~~
7. ~~Conducting an evaluation of each annual festival after its conclusion to identify strengths, weaknesses and recommendations for revisions or improvements.~~
8. ~~Preparing an annual report to the City Council regarding relevant issues for the just-concluded festival within sixty (60) days of its conclusion, including a detailed financial accounting of the annual festival's receipts and expenses.~~
9. ~~Other relevant activities as may be required to carry out the responsibilities outlined above or as may be assigned by the City Council.~~



**CITY COUNCIL AGENDA SUBMISSION**  
*August 23, 2016*

**Agenda Item:**

**RESOLUTION NO. 2016-120 A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH EMS Management and Consultants FOR PROFESSIONAL SERVICES FOR THE PURPOSE OF PROVIDING AMBULANCE BILLING SERVICE AND REPORTING SOFTWARE IN THE CITY OF OLIVETTE**

**Description:**

A request for proposals for Ambulance Billing Service and electronic Patient Care Reporting (ePCR) software was published on July 29th and 3 responses were received by the August 12, 2016 bid opening deadline. See the attached memo and additional information on responders.

**Recommended Action:**

Motion to approve Resolution 2016-120: A Resolution Authorizing the City Manager to Enter into an Agreement with EMS Management and Consultants for Professional Services for the Purpose of Providing Ambulance Billing Service and Reporting Software in the City of Olivette.

**Attachments:**

1. Ambulance Billing and ePCR Memo
2. Resolution 2016-120
3. Bidding Tabulation Sheet
4. Ambulance Billing and ePCR RFP
5. Agreements

**Funding Request:**

None

**Submitted by:**

*Scott Avery*  
**Fire Chief**



Memorandum

To: City Council  
From: Scott Avery, Fire Chief  
Subject: Selection of Ambulance Billing Services and electronic Patient Care Reporting software  
Date: September 13, 2016

The City of Olivette issued a Request for Proposals (RFP) for the selection of a vendor to supply Ambulance Billing Services and electronic Patient Care Reporting (ePCR) software. The ePCR is used by the paramedics to enter patient information and transmit that information to the receiving hospital, and a secure server that maintains our patient records. The department is currently using McKesson for Ambulance Billing and ImageTrend for our ePCR.

The RFP was published on the City website with several known vendors notified of the opportunity to bid. The City received responses from three vendors: (listed in order received)

<b>Ambulance Billing</b>	<b>ePCR</b>	<b>Billing</b>	<b>Amount</b>
Proclams	ImageTrend	6.5% net collections	Year 1 - \$11,738 Year 2+ - \$6,738
<b>EMS MC</b>	<b>ESO Solutions</b>	<b>7.25% net collections</b>	<b>Included</b>
McKesson	ESO Solutions	10.95 net collections	Included

The responses were evaluated by Fire Department personnel based on the criteria and requirements set forth in the RFP to arrive at a recommendation to accept the bid from EMS|MC to provide Ambulance Billing and ePCR from ESO Solutions.

**Recommendation**

Approval of Resolution 16-120 to authorize that the City Manager may enter into an agreement with EMS Management & Consultants, Inc. (EMS|MC) for Ambulance Billing Services, and providing electronic Patient Care Reporting (ePCR) through ESO Solutions, Inc. for an initial period of three (3) years with two (2) optional one year extensions at the discretion of the City of Olivette.

**RESOLUTION NO. 2016-120**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO  
ENTER INTO AN AGREEMENT WITH EMS MANAGEMENT AND  
CONSULTANTS FOR PROFESSIONAL SERVICES FOR THE PURPOSE OF  
PROVIDING AMBULANCE BILLING SERVICE AND REPORTING  
SOFTWARE IN THE CITY OF OLIVETTE**

**WHEREAS**, the City of Olivette Fire Department requires EMS Billing and reporting services on a contractual basis; and

**WHEREAS**, it has been determined that it is in the best interest of the City to outsource this work and bids were solicited; and

**WHEREAS**, following said bidding process, **EMS MANAGEMENT AND CONSULTANTS** fulfilled the bid requirements and will provide the billing and reporting services for an monthly cost of 7.5% of net collections on ambulance collections.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OLIVETTE, MISSOURI AS FOLLOWS:**

Section 1.

The City Manager is hereby authorized to enter into an agreement with **EMS MANAGEMENT AND CONSULTANTS** (EMS|MC) for Ambulance Billing Services, and providing electronic Patient Care Reporting (ePCR) through ESO Solutions, Inc. for an initial period of three (3) years with two (2) optional one year extensions at the discretion of the City of Olivette as per the agreement attached hereto and made a part hereof.

Section 2.

This resolution shall be in full force and effect from and after its passage.

Passed this 13<sup>th</sup> day of September, 2016.

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Mayor Ruth Springer

ATTEST:

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Myra G. Bennett, CMC/MPCC  
City Clerk  
City of Olivette



**City of Olivette**  
**Request for Proposal**  
***Ambulance Billing Services/Electronic Patient Care Reporting***  
***July 29, 2016***

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**General Information**

The City of Olivette (City) is requesting proposals from qualified firms or individuals (Responder) for ***Ambulance Billing Service*** (Part A) and ***Electronic Patient Care Reporting*** (Part B). Respondents must submit a proposal for ***Ambulance Billing Service*** and ***Electronic Patient Care Reporting***.

There is no expressed or implied obligation of the City to reimburse responding applicants for any expenses incurred in preparing proposals in response to this request.

**Background Information**

The City of Olivette is located in St. Louis County, Missouri and has a population of 7,737 as of 2010. The City has one ALS ambulance that runs approximately 800 calls per year. The ambulance covers the City of Olivette, a small contract area referred to as Elmwood with a population of approximately 400, and mutual aid to the surrounding communities. In 2015 the department ran 805 calls and transported 509 patients to area hospitals.

Ambulance billing for the City of Olivette is currently outsourced.

The current billing rates are:

BLS - \$ 734.31  
ALS1 - \$ 838.77  
ALS2 - \$1,048.72  
Mileage - \$11.53/mile

The approximate amount billed in FY2016 was \$425,775

The approximate amount collected in FY2016 was \$159,972

The approximate payer mix is:

Medicare: 43.8%  
Medicaid: 8.7%  
Private Insurance: 24.1%  
Private Pay: 23.4%

**Scope of Services**

The City of Olivette is seeking Proposals from qualified firms to provide Ambulance Billing Services and Electronic Patient Care Reporting in accordance with the terms, conditions, and specifications contained in this Request for Proposal (RFP). The City of Olivette, MO will award contracts for a firm to provide all services necessary to receive and process patient billing and Electronic Patient Care Reporting for the Olivette Fire Department.

The term of the contract resulting from this RFP shall be for an initial period of three (3) years with two (2) optional one year extensions at the discretion of the City of Olivette, MO.

**City of Olivette**  
**Request for Proposal**  
***Ambulance Billing Services/Electronic Patient Care Reporting***  
***July 29, 2016***

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**Specifications for Proposal**

All Responding firms must provide detailed responses for each of the requirements and /or questions listed in part A & B of this RFP. Responding firms are expected to individually address each item in Part A & B with a response clearly indicating which requirement is being addressed including 1.) an affirmative or negative in ability to meet the requirement AND 2.) how the firm would meet the requirement with an affirmative or in the case of a negative, the compensating mechanism or rationale to the exception in ability to address the requirement.

A full response packet will include responses to parts A & B described above with the signature of the responsible party. If a fulfillment of a requirement in Part A or B is contained within any marketing material, please indicate precisely where the response to the particular requirement is located.

In addition, please provide the following:

1. Distinguishing firm qualifications beyond those addressed with requirements in Parts A & B.
2. Detailed costs and billing information
3. List of services provided for similar entities
4. Proposed staff and principals
5. References

**Criteria for Selection**

All proposals submitted will be evaluated using the following criteria:

1. Compliance with the RFP including:
  - a. Response to each requirement in Parts A & B
2. Understanding of the services to be provided
3. Experience with providing similar services
4. Depth and breadth of experience and qualifications for personnel assigned
5. Cost

**Proposal Instructions**

For consideration to be given to any proposal submitted pursuant to this RFP, 5 copies must be received by **2:00pm on August 12, 2016** at the following address: City of Olivette, City Clerk, Bid Documents – Ambulance Billing Services, 9473 Olive Blvd, Olivette, MO 63132. No faxed, emailed, or late proposals will be accepted. The City will not be responsible for proposals placed in the mail which do not arrive by the deadline. Proposals received before the time of opening will be kept by the City Clerk securely and unopened. Proposals received after the deadline will not be considered.

**Contact with City Personnel**

At no time shall the Applicant, its agent, representatives or contracted personnel contact or otherwise communicate with City personnel. All questions relating to the RFP are to be addressed to **Ron Johnson; rjohnson@olivettemo.com**. Addenda information shall be shared, as necessary, to all participants.

**City of Olivette**  
**Request for Proposal**  
***Ambulance Billing Services/Electronic Patient Care Reporting***  
***July 29, 2016***

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**Probable Schedule:**

- RFP issued on 7/29/16
- RFP responses due (2:00 PM) 8/12/16
- Review and selection of firms to be interviewed 8/15/16
- Interviews with firms 8/18/16
- Recommendation to Council 8/23/16
- Enter in to negotiations with selected firm 8/25/16
- Contract completion and signing by 9/15/16

**Disposition and Disclosure of Proposals**

All proposals submitted in response to this RFP will become the property of the City and a matter of public record. The Applicant must identify, in writing, all copyrighted material, trade secrets, or other proprietary information that it claims is exempt from disclosure. Any Applicant claiming such an exemption must also state in this proposal that the applicant agrees to hold harmless, indemnify and defend the City and its agents, officials, and employees in any action or claim brought against the City for its refusal to disclose such materials, trade secrets or other proprietary information to any party making a request therefore. Any Applicant failing to include such a statement shall be deemed to have waived its right to an exemption from disclosure.

**Expiration of the Proposal**

By submitting a proposal, the applicant offers to enter into the Contract, the form and content of which shall be agreed upon by both parties. The applicant's proposal shall not be revocable for ninety (90) days following the response deadline indicated above. The City reserves the right to waive any defects in the offer of any vendor, to reject any or all offers, and to request additional information from any and all vendors.

**City of Olivette**  
**Request for Proposal**  
*Ambulance Billing Services/Electronic Patient Care Reporting*  
*July 29, 2016*

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**Part A – Ambulance Billing Services**

1. Provide all personnel, materials, and services needed to perform and accomplish all requirements for this proposal.
2. Authorized to bill for EMS services in the State of Missouri and must provide a full-time program manager for the duration of the contract.
3. Ensure all required documentation and agreements with payers are properly filed and maintained on behalf of the City of Olivette, MO.
4. Obtain pre-approval from the City of Olivette, MO of all forms used in the execution of this contract.
5. Commence billing the Patient Care Reports with the start-up date established by the Billing Agency and the City of Olivette. Billing data will be imported directly from the secured ePCR Server.
6. The Billing Agency shall handle the ePCR integration process at no charge.
7. Upon receipt of the ambulance report data, the Ambulance Billing Agency must prepare and mail invoices to the patient within seven (7) business days. This mailing shall include all necessary forms for payment processing, along with a return envelope.
8. The Billing Agency will provide a secure email data exchange system for the purpose of exchanging confidential patient information with the City of Olivette staff.
9. Ensure proper security and confidentiality of patient information and records, including, but not limited to executing a business associate agreement as required by the Health Insurance Portability & Accountability Act of 1996 (HIPAA).
10. Provide all labor, materials and technology necessary to obtain missing patient information from all available sources prior to issuing insurance claims or direct patient billing.
11. Utilize current diagnostic coding to ensure compliance with federal, state, and local regulations.
12. Accept responsibility for patient billing inquires and complaints during a minimum of regular business hours (M-Fri, 8AM - 5PM) Central Time, and provide an online system for patients to ask questions and provide payment.
13. Provide the tracking of submitted claims to ensure timely payments.
14. Provide monthly statements to allow patients to be aware of outstanding balances.
15. Provide access to the City of Olivette, MO staff to monitor, billing activities and accounts receivable for all accounts under this contract.

**City of Olivette**  
**Request for Proposal**  
***Ambulance Billing Services/Electronic Patient Care Reporting***  
***July 29, 2016***

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16. Provide a reporting system that provides system generated monthly reports and customized reports that are accessible to the City of Olivette staff.
17. Facilitate the posting of revenues and provide documents to the City of Olivette, MO's banking institution.
18. Requests for refunds must include the patient's payment information along with a detailed explanation of why the refund is requested and all information necessary to submit the refund.
19. Ensure that all data collection, reporting, and billing methods comply with all current State and Federal Regulations.
20. Provide regular updates and on-going training to the City of Olivette, MO on any changes to billing requirements based on industry standards or requirements of applicable health care laws and regulations.
21. Train all involved personnel in the operation and specifics of the system prior to start date.

**City of Olivette**  
**Request for Proposal**  
*Ambulance Billing Services/Electronic Patient Care Reporting*  
*July 29, 2016*

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**Part B – Electronic Patient Care Reporting**

The City of Olivette is searching for a firm that can provide a high quality EMS Electronic Patient Care Reporting system (ePCR) for the EMS providers of the Olivette Fire Department. The City of Olivette expects the selected firm to propose a software system capable of the following:

1. Hosted Software as a Service electronic care report system designed for EMS services
2. On line and off line capabilities
3. NEMSIS 3.0 compliant and able to provide in NEMSIS 2 until the State of Missouri is able to process NEMSIS 3 data.
4. Bi-directional Hospital Data Exchange
5. Interface with current and future CAD systems for call data (currently Global)
6. Interface with Philips Heartstart MRx product for patient data importing.
7. A HIPPA compliant solution
8. Ability to have at least 3 concurrent users
9. Quality Management tools
10. Reporting tools with customized capabilities
11. CAD reconciliation tools

## BILLING SERVICES AGREEMENT

THIS BILLING SERVICES AGREEMENT (hereinafter "Agreement"), is entered into this 23rd day of August, 2016 between EMS MANAGEMENT & CONSULTANTS, INC. (hereinafter "EMS|MC") and the City of Olivette, MO (hereinafter "Client").

### WITNESSETH:

WHEREAS, EMS|MC is an ambulance billing service company with experience in providing medical billing and collection services to medical transport providers, including fire and rescue and emergency medical service (EMS) providers; and

WHEREAS, Client is normally engaged in the business of providing emergency medical services, and billable medical transportation services; and

WHEREAS, Client wishes to retain EMS|MC to provide medical billing and collection services as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements described below and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- 1. ENGAGEMENT.** During the term of this Agreement, EMS|MC shall provide routine billing, bill processing and fee collection services reasonably required and customary for service providers of similar size and situation to Client (the "Services"). The Services shall include: (1) preparing and submitting initial and secondary claims and bills for Client to insurers and others responsible for payment; (2) performing reasonable and diligent routine collection efforts to secure payments from primary and secondary payers and patients or other entities, (as EMS|MC, in its sole discretion deems appropriate); (3) issuing patient statements for all unpaid balances; and (4) referring accounts which have not been collected during EMS|MC normal billing cycle to an outside collection agency if so directed by Client.

Accounts with outstanding balances after the insurance and/or third party payer has determined benefits due will be billed by EMS|MC to the patient.

EMS|MC will send follow-up bills, except as to those accounts on which an insurance carrier or third-party payer has accepted responsibility to pay. Once Client has submitted all necessary information, EMS|MC will bill all uninsured patients directly.

EMS|MC will provide Client with a monthly financial report, to Client within ten (10) business days of the last business day of the month. The month end report shall include an account analysis report, aging report and accounts receivables reconciliation report. Deposit reports will be provided daily.

EMS|MC shall provide appropriate storage and data back-up for all records pertaining to Client's bills and collections hereunder, accessible to Client during reasonable business hours.

EMS|MC shall maintain records of all Services performed and records of all financial transactions. EMS|MC shall retain all financial records not tendered or returned to Client on any termination hereof for at least seven (7) years, and retain all Medicare and Medicaid records for seven (7) years.

EMS|MC will comply with all applicable state and federal regulations applicable to EMS|MC in the provision of the Services hereunder. This undertaking will expressly survive the termination of this Agreement.

EMS|MC shall notify Client of all patient complaints about clinical services within five (5) business days of receipt and notify Client of all patient complaints about billing within ten (10) days of receipt.

Client shall promptly advise EMS|MC of notices of audit received by Client. EMS|MC shall directly advise Client of any notices of audit, requests for medical records or other contacts or inquiries out of the normal course of business from representatives of Medicare, Medicaid or private payers, with which Client contracts ("Payer Inquiries"),. Client will be notified of Payer Inquiries within ten (10) business days of EMS|MC's receipt of same.

EMS|MC is appointed as the agent of Client under this Agreement solely for the express purposes of this Agreement relating to billing and receiving payments and mail, receiving and storing documents, and communicating with hospitals and other entities to facilitate its duties. EMS|MC will have no authority to pledge credit, contract, or otherwise act on behalf of Client except as expressly set forth herein.

As to all payments received from Medicare, Medicaid and other government funded programs, the parties specifically acknowledge that EMS|MC will only prepare claims for Client and will not negotiate checks payable or divert electronic fund transfers to Client from Medicare, Medicaid or any other government funded program. All Medicare, Medicaid and any other government funded program payments, including all electronic fund transfers, will be deposited directly into a bank account designated by Client to receive such payments and as to such account only Client, through its officers and directors, shall have access.

The Services provided by EMS|MC to Client under this Agreement are conditioned on Client's fulfillment of the responsibilities set forth in Sections 2 and 3 of this Agreement.

EMS|MC shall have no responsibility to provide any of the following services:

- (a) Determining the accuracy or truthfulness of documentation and information provided by Client;
- (b) Providing services outside the EMS|MC billing system;
- (c) Submitting any claim that EMS|MC believes to be inaccurate or fraudulent;
- (d) Providing any service not expressly required of EMS|MC by this Agreement.

## 2. COMPENSATION OF EMS|MC.

- (a) Client shall pay a fee for the Services of EMS|MC hereunder, on a monthly basis, in an amount equal to (7.5) percent of "Net Collections" as defined below (the "Compensation"). Net Collections shall mean all cash and check amounts including electronic fund transfers (EFT's) received by EMS|MC from payers, patients, attorney's offices, court settlements, collection agencies, government institutions, group health insurance plans, private payments, credit cards, healthcare facilities or any person or entity submitting funds on a patient's account, or any amounts paid directly to Client with or without the knowledge of EMS|MC that are paid, tendered, received or collected each month for Client's transports, less refunds processed or any other necessary adjustments to those amounts.

EMS|MC shall submit an invoice to Client by the tenth (10<sup>th</sup>) day of each month for the Compensation due to EMS|MC for the previous calendar month. The Compensation amount reflected on the invoice shall be paid in full by the 20<sup>th</sup> day of the month in which the invoice is first presented to Client. Such amount shall be paid without offset unless the calculation of the amount is disputed in good faith, in which case Client shall pay the undisputed amount and shall provide EMS|MC with detailed written notice of the basis for the disputed portion no later than the time payment is normally due. All invoices are to be paid directly from Client's banking institution to EMS|MC via paper check, direct deposit or ACH draft initiated by EMS|MC into EMS|MC's bank account.

In the event of a material change to the billing process and/or scope of Services provided in this Agreement or a significant difference in the original patient demographics provided by Client, EMS|MC reserves the right to, in good faith, negotiate a fee change with Client and amend this Agreement.

EMS|MC may, in its sole discretion, immediately cease to provide Services for Client should the outstanding balance owed to EMS|MC become in arrears. Claims processing will not resume

until all outstanding balances are paid in full or arrangements approved by EMS|MC have been made to wholly resolve any outstanding balances.

FEES and CHARGES - A one-time late fee of 5% shall be added to any invoices that remain unpaid by the 25th day of the calendar month in which such invoice is first presented to Client. Interest shall begin to accrue on all unpaid balances starting thirty (30) days after the date of the applicable invoice for any unpaid balances at the rate of 1½% per month or the highest rate allowed under applicable law, whichever is lower. Client shall be responsible for all costs of collection incurred by EMS|MC or others in attempting to collect any amounts due from Client under this Agreement, including, but not limited to, reasonable attorney fees.

## **2.1 Software.**

### **(a.) Software:**

During the term of this Agreement, EMS|MC will pay the full cost of ESO software, based on Client's contract terms with ESO Software in effect as of the date of this Agreement. Future increases in the monthly base package software cost will be borne by Client unless EMS|MC specifically agrees to pay for such increase. Client agrees to provide EMS|MC with administrative access to the ePCR system or similar access in order to run reports and review documents and attachments. EMS|MC shall stop paying any software costs upon the expiration or termination of this Agreement.

## **3. RESPONSIBILITIES OF CLIENT.**

The following responsibilities of Client are a condition of EMS|MC's services under this Agreement, and EMS|MC shall have no obligation to provide the Services to the extent that Client has not fulfilled these responsibilities:

(a) Client will pay all amounts owed to EMS|MC under this Agreement.

(b) Client will provide EMS|MC with complete and accurate demographic and charge information necessary for the processing of professional and/or technical component billing to third parties and/or patients, including the following: patient identification (name, address, phone number, birth date, gender); guarantor identification and address; insurance information; report of services; special claim forms; pre-authorization numbers; and such additional information as is requested by EMS|MC.

(c) In addition, Client shall provide complete and accurate medical record documentation necessary to ensure proper billing and secure claim payment; secure authorizations and signatures, including consent to treat, assignment of benefits and release of information, and physician certification statements (PCS) forms for all non-emergency transports. Client will report to EMS|MC within ten (10) business days of payments received directly by Client, and promptly notify EMS|MC of any cases requiring special handling or billing. Client must provide Patient Care Reports (PCR's) in a timely manner in order to achieve higher performance. Further, Client will: implement any reasonable changes that EMS|MC determines to be necessary for the accurate completion of billing forms and related documentation; execute all forms required by Medicare, Medicaid, CHAMPUS, and any other payer or insurance carrier to allow EMS|MC to carry out its billing and other duties under this Agreement; implement reasonable and customary charges for complete, compliant billing as may be identified and recommended by EMS|MC; and maintain Client's own files with all original or source documents, as required by law. Client acknowledges that EMS|MC is not the agent of Client for storage of source documentation. Client will provide EMS|MC with a copy of any existing billing policy manuals or guidelines, Medicare or Medicaid reports, or any other record or document related to services or billing of Client's accounts.

(d) In addition, Client is to provide EMS|MC with complete and accurate medical records for each incident or patient service rendered for reimbursement [(i.e. the Ambulance Call Report (ACR) or Patient Care Report (PCR)]. The PCR record must thoroughly detail the patient's

full medical condition at the time of service and include a chronological narrative of all services and treatment rendered. Client represents and warrants that the PCR and any and all associated medical records, forms and certification statements provided to EMS|MC are true and accurate and contain only factual information observed and documented by the attending field technician during the course of the treatment and transport.

- (e) Client will obtain any and all additional patient documentation required by Centers for Medicare and Medicaid Services (“CMS”) or any other governmental or commercial payer for reimbursement consideration, including but not limited to a Physician Certification Statements (PCS) or other similar medical necessity forms or prior authorization statements as deemed necessary by the payer.
- (f) Client shall ensure that any refunds posted by EMS|MC are actually issued and paid to the patient, insurer, or other payer as appropriate.
- (g) Client shall allow EMS|MC to audit Client’s records and processes at least annually, and on a more frequent basis if reasonably necessary, upon ten (10) days advance notice to Client, during regular business hours, to attempt to ensure that Client is in compliance with this Agreement and that all fees due to EMS|MC have been paid.
- (h) Client shall provide EMS|MC with access to its facilities and personnel for the purpose of providing on-site and/or online training to such personnel. Client shall cooperate with EMS|MC and facilitate any training that EMS|MC wishes to provide.
- (i) Client shall comply with all applicable federal, state, and local laws, rules, regulations, and other legal requirements that in any way affect this Agreement or the duties and responsibilities of the parties hereunder.

#### **4. TERM OF AGREEMENT.**

(a) This Agreement shall be effective commencing on November 1, 2016 and shall thereafter continue through October 31, 2019. This Agreement shall be binding upon the parties hereto and their respective successors, assigns, and transferees. The Agreement shall automatically renew on the same terms and conditions as stated herein, for successive one (1) year terms, unless either party gives written notice of intent not to renew at least 60 days before expiration of any term. Notwithstanding anything herein to the contrary, this Agreement may be terminated under the provisions provided below.

(i) **Termination for Cause.** Notwithstanding Section 4(a), this Agreement may be terminated by either party at any time for Cause, as defined below, based on a material breach of a term or condition hereof by the other party which is not remedied by the other party within ten (10) days of written notice describing the breach in reasonable detail. "Cause" shall include the following:

- (1) Failure of Client to make timely payments due under this Agreement;
- (2) Any damage to property, business, reputation, or good will of the other party hereto arising from the gross negligence or willful misconduct of a party;
- (3) Injury to any customer, independent contractor, employee or agent of the other party hereto arising from the gross negligence or willful misconduct of a party;
- (4) Client's engagement of another billing services provider to provide services during the term of this Agreement;
- (5) Harassment of any employee or contractor of a party or commitment of any act by a party which creates an offensive work environment;

- (6) Failure to practice in accordance with the appropriate policies, standards and procedures established by the respective parties;
- (7) Commitment of any unethical or immoral act which harms the other party or could have the effect of harming the other party; or
- (8) Any breach of any material provision of this Agreement.

**5. RESPONSIBILITIES UPON TERMINATION.**

- (a) Subject to Client's payment of all amounts due hereunder, upon any termination of this Agreement, and during the period of any notice of termination, EMS|MC will make available to Client or its authorized representatives data from the billing system regarding open accounts in an electronic format, and will otherwise reasonably cooperate and assist in any transition of the Services to Client, or its successor billing agent.
- (b) Following termination of this Agreement, for a period of ninety (90) days (the "Wind Down"), EMS|MC will continue its billing and collection efforts as to those accounts with dates of services prior to termination, subject to the terms and conditions of this Agreement, for the applicable fee set forth in Section 2(a). Client will continue to provide EMS|MC with copies of checks and payments on those accounts which were filed by EMS|MC under this Agreement. EMS|MC shall have no further responsibilities as to such accounts after the Wind Down; however EMS|MC shall be entitled to compensation as provided in Section 2(a) for such amounts filed by EMS|MC, regardless of whether such amounts are collected by Client during or after the Wind Down period. In the event Client has an outstanding balance owed to EMS|MC which is more than 45

days in arrears at the time of termination, or in the event that EMS|MC believes that Client has provided false or fraudulent claim information, EMS|MC shall have no obligation to provide any Services after the date of termination.

**6. EXCLUSIVITY AND MISCELLANEOUS BILLING POLICIES.**

- (a) During the term of this Agreement, EMS|MC shall be Client's exclusive provider of the Services or services similar to the Services. Client may not directly file, submit or invoice for any medical or medical transportation services rendered while this Agreement is in effect.
- (b) In addition, Client agrees not to collect or accept payment for services from any patient unless the service requested does not meet coverage requirements under any insurance program in which the patient is enrolled or the patient is uninsured. Payments received directly by Client for these services must be reported to EMS|MC as provided in Section 3(b) hereof and shall be treated as Net Collections for purposes of Section 2(a) hereof.
- (c) In compliance with CMS regulations, Medicare patients will not be charged by Client a higher rate or amount for identical covered services charged to other insurers or patients. Accordingly, only one fee schedule shall exist and be used in determining charges for all patients regardless of insurance coverage.
- (d) EMS|MC reserves the right not to submit a claim for reimbursement on any patient in which the PCR and/or associated medical records are incomplete or appear to be inaccurate or do not contain enough information to substantiate or justify reimbursement. This includes missing patient demographic information, insurance information, physician certification statements (PCS) or any required crew and/or patient signatures, or otherwise contradictory medical information.
- (e) Client shall implement and maintain a working compliance plan ("Compliance Plan") in accordance with the most current guidelines

of the U.S. Department of Health and Human Services (“HHS”). The Compliance Plan must include, but not be limited to, formal written policies and procedures and standards of conduct, designation of a compliance officer, quality assurance policy and effective training and education programs.

- (f) In accordance with the HHS Office of Inspector General (“OIG”) Compliance Program Guidance for Third-Party Medical Billing Companies, EMS|MC is obligated to report misconduct to the government, if EMS|MC discovers credible evidence of Client’s continued misconduct or flagrant, fraudulent or abusive conduct. In the event of such evidence, EMS|MC has the right to (a) refrain from submitting any false or inappropriate claims, (b) terminate this Agreement and/or (c) report the misconduct to the appropriate authorities.

**7. NON-INTERFERENCE/NON-SOLICITATION OF EMS|MC EMPLOYEES.**

Client understands and agrees that the relationship between EMS|MC and each of its employees constitutes a valuable asset of EMS|MC.

Accordingly, Client agrees that both during the term of this Agreement and for a period beginning on the date of termination of this Agreement, whatever the reason, and ending three (3) years after the date of termination of this Agreement (the “Restricted Period”), Client shall not, without EMS|MC’s prior written consent, directly or indirectly, solicit or recruit for employment; attempt to solicit or recruit for employment; or attempt to hire or accept as an employee, consultant, contractor, or otherwise, or accept any work from EMS|MC’s employees with whom Client had material contact during the term of this Agreement, in any position where Client would receive from such employees the same or similar services that EMS|MC performed for Client during the term of this Agreement. Client also agrees during the Restricted Period not to unlawfully urge, encourage, induce, or attempt to urge, encourage, or induce any employee of EMS|MC to terminate his or her employment with EMS|MC. Client has carefully read and considered the provisions of Section 7 hereof, and having done so, agrees that the restrictions set forth in such section (including, but not limited to, the time period) are fair and

reasonable and are reasonably required for the protection of the legitimate interests of EMS|MC, its officers, directors, shareholders, and employees.

## **8. PRIVACY.**

Confidentiality. All data and information furnished to EMS|MC by Client shall be regarded as confidential (“Confidential Information”), shall remain the sole property of Client and shall be held in confidence and safekeeping by EMS|MC under the terms of this Agreement. EMS|MC agrees that except as provided otherwise herein, its officers, employees and agents will not disclose to any person, firm or entity other than Client or EMS|MC’s or Client’s designated legal counsel, accountants or practice management consultants any information about Client, its practice or billing, or any of the patients of Client unless and to the extent required to do so by applicable law, including, without limitation, federal, state or local law enforcement authorities acting within their jurisdiction and/or acting under the law and/or under court orders. EMS|MC’s obligations of confidentiality under this Section 8 shall not extend to: (1) information which is already in the possession of EMS|MC and not under a duty of non-disclosure; (2) information which is generally known or revealed to the public through no fault of EMS|MC; (3) information which is revealed to EMS|MC by a third party, unless such party is under a duty of non-disclosure of which EMS|MC is aware; or (4) information that was or is independently developed by EMS|MC without reference to or use of any of the Confidential Information. In addition to the foregoing, EMS|MC and Client shall comply with the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”), and with the regulations promulgated thereunder, including, without limitation, the Privacy Rule, the Security Rule, and the amendments enacted in the Health Information Technology for Economic and Clinical Health (“HITECH”) Act. EMS|MC and Client shall execute a separate Business Associate Agreement under HIPAA.

## **9. LIMITATIONS OF LIABILITY AND DISPUTE RESOLUTION**

- (a) EMS|MC and Client acknowledge and agree that despite their best efforts, billing errors may occur from time to time. Each party will

promptly notify the other party of the discovery of a billing error. EMS|MC's sole obligation in the event of a billing error will be to correct the error by making appropriate changes to the information in its system, posting a refund if appropriate, and re-billing the underlying claim if permissible.

- (b) A "Claim" is defined as any claim or other matter in dispute between EMS|MC and Client that arises from or relates in any way to this Agreement or to the Services, hardware, software, or data provided by EMS|MC hereunder, regardless of whether such claim or matter is denominated as a contract claim, tort claim, warranty claim, indemnity claim, statutory claim, arbitration demand, or otherwise.
- (c) To the fullest extent allowed by law, the total liability of EMS|MC to Client regarding any and all Claims shall be capped at, and shall in no event exceed, the total fees paid by Client to EMS|MC under this Agreement (the "Liability Cap"). All amounts that may be potentially awarded against EMS|MC in connection with a Claim are included in and subject to the Liability Cap, and shall not cause the Liability Cap to be exceeded, including, without limitation, all compensatory damages, other damages, interest, costs, expenses, and attorneys' fees. Provided, however, that nothing in the foregoing shall be construed as an admission of liability by EMS|MC in any amount or as a waiver or compromise of any other defense that may be available to EMS|MC regarding any Claim.
- (d) To the fullest extent allowed by law, and notwithstanding any statute of limitations, statute of repose, or other legal time limit to the contrary, no Claim shall be brought by Client against EMS|MC after the earlier of the following to occur (the "Claim Time Limit"): (i) two years after the effective date of termination or expiration of this Agreement; (ii) three years after the date of the underlying medical service or medical transportation service provided by Client to a patient that is the subject of a Claim; or (iii) sixty (60) days after the expiration of the time in which a payer could bring a claim for overpayment or reimbursement against Client under applicable law. Any Claim not brought within the Claim Time Limit is waived. The

Claim Time Limit applies, without limitation, to any Claim brought in arbitration under the arbitration clause below, and shall be deemed to have been satisfied if an arbitration demand asserting such Claim is received by the American Arbitration Association (or other arbitration administrator as may be mutually agreed on by EMS|MC and Client) within the Claim Time Limit. Notwithstanding the foregoing, if a Claim has been asserted in arbitration within the Claim Time Limit, a proceeding in court to confirm, enforce, vacate, modify, correct, or amend an arbitration award resulting from such arbitration may be brought outside the Claim Time Limit as long as it is brought within the time period required by applicable law.

- (e) To the fullest extent allowed by law, EMS|MC and Client waive Claims against each other for consequential, indirect, special, punitive, exemplary, and treble damages, and for any other damages in excess of direct, compensatory damages (the “Non-Direct Damages Waiver”).
  
- (f) Subject to the Liability Cap and the Claim Time Limit, but notwithstanding the Non-Direct Damages Waiver, EMS|MC agrees to indemnify, hold harmless, and defend Client with reasonably acceptable counsel from and against any fines, penalties, damages, and judgments that Client becomes legally obligated to pay to a third party proximately caused by EMS|MC’s gross negligence or willful misconduct. Provided, however, that this indemnity is subject to the following further conditions and limitations: (i) Client must provide prompt written notice to EMS|MC of the matter for which indemnity is or may be sought, within such time that no right of EMS|MC is prejudiced, and in no event no later than thirty (30) days after Client first becomes aware of the facts that give rise or may give rise to a right of indemnity; (ii) Client must allow EMS|MC the opportunity to direct and control the defense and handling of the matter for which indemnity is or may be sought; (iii) Client must not agree to any settlement or other voluntary resolution of a matter for which indemnity is or may be sought without EMS|MC’s express consent; and (iv) Client shall not seek or be entitled to indemnify for amounts that Client reimburses or refunds to Medicaid, Medicare, any governmental entity, any

insurer, or any other payer as a result of medical services or medical transportation services for which Client should not have received payment in the first place under applicable rules, regulations, standards and policies. Client waives all rights of indemnity against EMS|MC not in accordance with this subsection.

- (g) All Claims between EMS|MC and Client shall be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association then in effect, except that either party may, at that party's option, seek appropriate equitable relief in any court having jurisdiction. The hearing in such arbitration proceeding shall take place in Charlotte, North Carolina, or in such other location as may be mutually agreed on by EMS|MC and Client. The arbitrator in such proceeding, or if more than one arbitrator, each arbitrator, shall be an attorney with at least fifteen (15) years of experience in commercial litigation or in health care law. The arbitrator(s) shall have no authority to enter an award against EMS|MC that: (i) exceeds the Liability Cap; (ii) is based on a Claim brought after the Claim Time Limit; (iii) includes any damages waived by the Non-Direct Damages Waiver; or (iv) is otherwise in contravention of this Agreement. An award entered by the arbitrator(s) shall be enforceable in the United States District Court for the Western District of North Carolina or in any other court having jurisdiction.
- (h) In any arbitration proceeding or permitted court proceeding regarding any Claim, the prevailing party shall be entitled to recover from the non-prevailing party the reasonable costs and expenses incurred by the prevailing party in connection with such proceeding, including, without limitation, the reasonable attorneys' fees, arbitration or court filing fees, arbitrator compensation, expert witness charges, court reporter charges, and document reproduction charges incurred by the prevailing party. Which party is the prevailing party shall be determined in light of the surrounding circumstances, such as comparing the relief requested with that awarded, and shall not be determined simply by whether one party or the other receives a net monetary recovery in its favor.

## 10. GENERAL.

Status of Parties. Nothing contained in this Agreement shall be construed as establishing a partnership or joint venture relationship between EMS|MC and Client, or as establishing an agency relationship beyond EMS|MC's service as a billing and collection agent of Client under the express terms of this Agreement. EMS|MC and its employees and representatives shall have no legal authority to bind Client.

Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assigned by either party without prior written consent of the other party, except that this Agreement may be assigned without consent to the survivor in any merger or other business combination including either party, or to the purchaser of all or substantially all of the assets of either party.

Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns (where permitted), and transferees.

Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date delivered personally or deposited in the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, addressed as follows:

Client:

City of Olivette  
Office of the City Clerk  
9473 Olive Blvd  
Olivette, MO 63132

EMS|MC:

EMS Management & Consultants, Inc.  
Laurie O'Quinn  
2540 Empire Drive  
Suite 100  
Winston-Salem, NC 27103

Either party may change its address for notices under this Agreement by giving written notice of such change to the other party in accordance with the terms of this section.

Governing Law. This Agreement and the rights and obligations to the parties hereunder shall be construed in accordance with and governed by the laws of the State of North Carolina, notwithstanding any conflicts of law rules to the contrary.

Integration of Terms. This instrument constitutes the entire agreement between the parties, and supersedes all prior negotiations, commitments, representations and undertakings of the parties with respect to its subject matter. Without limiting the foregoing, this Agreement supersedes and takes precedence over any inconsistent terms contained in any Request for Proposal (“RFP”) from Client and any response to that RFP from EMS|MC.

Amendment and Waiver. This Agreement may be amended or modified only by an instrument signed by all of the parties. A waiver of any provision of this Agreement must be in writing, designated as such, and signed by the party against whom enforcement of the waiver is sought. The waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach thereof.

Severability. If any provision of this Agreement shall not be valid for any reason, such provision shall be entirely severable from, and shall have no effect upon, the remainder of this Agreement. Any such invalid provision shall be subject to partial enforcement to the extent necessary to protect the interest of the parties hereto.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed on the later of the dates set forth below.

EMS|MC:

CLIENT:

EMS Management & Consultants, Inc.

City of Olivette, MO

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## SUBSCRIPTION AGREEMENT

This Subscription Agreement (the “**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“**Effective Date**”) by and between ESO SOLUTIONS, INC., a Texas corporation with its principal place of business at 9020 N Capital of Texas Highway, Building II-300, Austin, Texas 78759 (“**ESO**”), and Olivette Fire Department, with its principal place of business at 9473 Olive Blvd, Olivette, MO 63132 (“**Customer**”) (each a “**Party**” and collectively the “**Parties**”).

**WHEREAS**, ESO is in the business of providing software services (the “**Services**”) to businesses and municipalities; and

**WHEREAS**, Customer desires to obtain these Services from ESO, all upon the terms and conditions set forth herein;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by Customer, the Parties mutually agree to the following:

1. **Services.** ESO agrees to provide Customer the Services selected by Customer on Exhibit A attached hereto and incorporated by reference herein. Customer agrees that Services purchased hereunder are neither contingent on the delivery of any future functionality or future features, nor dependent on any oral or written public comments made by ESO regarding future functionality or future features.
2. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate one year after the Effective Date (“**Initial Term**”). THE AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE RENEWAL TERMS OF ONE YEAR, UNLESS ONE PARTY GIVES THE OTHER PARTY WRITTEN NOTICE THAT THE AGREEMENT WILL NOT RENEW, AT LEAST THIRTY (30) DAYS PRIOR TO THE END OF THE CURRENT TERM.
3. **Subscription Fees, Invoices and Payment Terms.**
  - a. **Subscription Fees.** Customer has chosen to have EMS Management and Consultants with its principal place of business at 2540 Empire Drive, Winston Salem, North Carolina 27103 (“**Billing Agent**”) pay all or a portion of the fees for the Services on its behalf as indicated in Exhibit A (the “**Subscription Fees**”). In the event Billing Agent does not pay the Subscription Fees on behalf of Customer, and Customer chooses to continue receiving Services, then Customer shall be responsible for any outstanding fees. ESO may evaluate Customer’s usage and adjust Billing Agent’s invoice based on changes in Customer usage as indicated in Exhibit A. ESO shall have the option to increase pricing, except during the Initial Term, as long as it provides at least sixty (60) days’ notice of such increase to Billing Agent prior to automatic renewal under Section 2 above.
  - b. **Payment of Invoices.** Customer shall pay the full amount of invoices within thirty (30) days of receipt (the “**Due Date**”). Customer is responsible for providing complete and accurate billing and contact information to ESO and to notify ESO of any changes to such information.
  - c. **Disputed Invoices.** If Customer in good faith disputes a portion of an invoice, Customer shall remit to ESO, by the Due Date, full payment of the undisputed portion of the invoice. In addition, Customer must submit written documentation: (i) identifying the disputed amount, (ii) an explanation as to why the Customer believes this amount is incorrect, (iii) what the correct amount should be, and (iv) written evidence supporting Customer’s claim. If Customer does not notify ESO of a disputed invoice by the Due Date, Customer shall have waived its right to dispute that invoice. Any disputed amounts determined by ESO to be payable shall be due within ten (10) days of such determination.
4. **Termination.**
  - a. **Termination by Customer for ESO Default.** If ESO fails to perform a material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from Customer (“**ESO Default**”), Customer may terminate this Agreement without incurring further liability, except for the payment of all accrued but unpaid Subscription Fees. If ESO is unable to provide Service(s) for ninety (90) consecutive days due to a Force Majeure event as defined in Section 16a, *Force Majeure*, Customer may terminate the affected Service(s) without liability to ESO.
  - b. **Termination by ESO for Customer Default.** ESO may terminate this Agreement with no further liability if (i) Customer fails to pay for Services as required by this Agreement and such failure remains uncorrected for five (5) days following written notice from ESO, or (ii) Customer fails to perform any other material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from ESO (collectively referred to as “**Customer Default**”). In the event of a Customer Default, ESO shall have the right to (i) terminate this Agreement; (ii) suspend all Services being provided to Customer; (iii) terminate the right to use the Software on the web and/or mobile devices; (iv) apply interest to the amount past due, at the rate of one and one-half percent (1½%) (or the maximum legal rate, if less) of the unpaid amount per month; (v) offset any amounts that are owed to Customer by ESO against the past due amount then owed to ESO; and/or (vi) take any action in connection with any other right or remedy ESO may have under this Agreement, at law or in equity. If ESO terminates this Agreement due to a Customer Default, Customer shall remain liable for all accrued Subscription Fees and other charges. In addition, Customer agrees to pay ESO’s reasonable expenses (including attorney and collection fees) incurred in enforcing ESO’s rights in the event of a Customer Default.

5. **Delivery of Data upon Expiration or Termination of Agreement.** If Customer requests its data within thirty (30) days of expiration of this Agreement, or the termination of this Agreement pursuant to Section 4 above, ESO shall deliver to Customer its data. ESO shall make reasonable and good faith efforts to accommodate Customer's preference for the type of media for delivery. Customer shall reimburse ESO for the cost of the media on which Customer's data is delivered to Customer.
6. **System Maintenance.** In the event ESO determines that it is necessary to interrupt the Services or that there is a potential for Services to be interrupted for the performance of system maintenance, ESO will use good-faith efforts to notify Customer prior to the performance of such maintenance and will schedule such maintenance during non-peak hours (midnight to 6 a.m. Central Standard Time). In no event shall interruption of Services for system maintenance constitute a failure of performance by ESO.
7. **Access to Internet.** Customer has sole responsibility for obtaining, maintaining, and securing its connections to the Internet, and ESO makes no representations to Customer regarding the reliability, performance or security of any particular network or provider.
8. **Mobile Software.** If Customer elects to use ESO's Mobile Software (the "***Software***"), the provisions of this Section shall apply.
  - a. **Use of Software.** Subject to the terms, conditions and restrictions in this Agreement and in exchange for the Mobile Software Interface Fees and/or Subscription Fees, ESO hereby grants to Customer a non-exclusive, world-wide, non-transferable rights, for the Term of this Agreement, to use and copy (for installation and backup purposes only) the Software to the units for which the Mobile Software Interface has been purchased.
  - b. **Ownership and Restrictions.** This Agreement does not convey any rights of ownership in or title to the Software or any copies thereof. All right, title and interest in the Software and any copies or derivative works thereof shall remain the property of ESO. Customer will not: (i) disassemble, reverse engineer or modify the Software; (ii) allow any third party to use the Software; (iii) use the Software as a component in any product or service provided by Customer to a third party; (iv) transfer, sell, assign, or otherwise convey the Software; (v) remove any proprietary notices placed on or contained within the Software; or (vi) copy the Software except for backup purposes. Customer agrees to keep the Software free and clear of all claims, liens, and encumbrances.
  - c. **Mobile Software Interface Fee.** The Mobile Software Interface Fee is non-refundable. The Software shall be deemed accepted upon delivery to Customer.
  - d. **Title.** ESO hereby represents and warrants to Customer that ESO is the owner of the Software or otherwise has the right to grant to Customer the rights set forth in this Agreement. In the event of a breach or threatened breach of the foregoing representation and warranty, Customer's sole remedy shall be to require ESO to either: (i) procure, at ESO's expense, the right to use the Software, or (ii) replace the Software or any part thereof that is in breach and replace it with Software of comparable functionality that does not cause any breach.
9. **Support and Updates.** During the Term of this Agreement, ESO shall provide Customer the support services and will meet the service levels as set forth in **Exhibit B** attached hereto and incorporated herein. ESO will also provide Updates to Customer, in accordance with **Exhibit B**.
10. **Other Services.** Upon request by Customer, ESO may provide services related to the Software other than the standard support described above at ESO's then-current labor rates. This may include on-site consultation, configuration, and initial technical assistance and training for the purpose of installing the Software and training selected personnel on the use and support of the Software. ESO shall undertake reasonable efforts to accommodate any written request by Customer for such professional services.
11. **Indemnification by Customer.** Customer will defend and indemnify ESO from any and all claims brought by third parties against ESO and will hold ESO harmless from all corresponding losses incurred by ESO arising out of or related to (i) Customer's misuse of the Services and/or Software, (ii) any services provided by Customer to third parties, or (iii) Customer's negligence, inaction or omission in connection with the services it provides to third parties.
12. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT. ADDITIONALLY, ESO SHALL NOT BE LIABLE TO CUSTOMER FOR ANY ACTUAL DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT THAT ESO HAS, PRIOR TO SUCH TIME, COLLECTED FROM CUSTOMER WITH RESPECT TO SERVICES DELIVERED HEREUNDER. FURTHERMORE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, EITHER IN CONTRACT OR IN TORT, FOR PROTECTION FROM UNAUTHORIZED ACCESS OF CUSTOMER DATA OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION, NOT CONTROLLED BY ESO, THROUGH ACCIDENT OR FRAUDULENT MEANS OR DEVICES. THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY WAS SPECIFICALLY BARGAINED FOR AND IS ACCEPTABLE TO CUSTOMER. FURTHER, EACH PARTY'S WILLINGNESS TO AGREE TO THE LIMITATIONS CONTAINED IN THIS SECTION WAS MATERIAL TO ENTERING INTO THIS AGREEMENT.

13. **Acknowledgements and Disclaimer of Warranties.** Customer acknowledges that ESO cannot guarantee that there will never be any outages in ESO network and that no credits shall be given in the event Customer's access to ESO's network is interrupted. THE SERVICES ARE PROVIDED "AS IS." UNLESS OTHERWISE SPECIFIED HEREIN, ESO MAKES NO REPRESENTATION OR WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR A PARTICULAR PURPOSE, OF ANY SERVICE OR SOFTWARE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER (INCLUDING WITHOUT LIMITATION THAT THERE WILL BE NO IMPAIRMENT OF DATA OR THAT SERVICES WILL BE UNINTERRUPTED OR ERROR FREE), ALL OF WHICH WARRANTIES BY ESO ARE HEREBY EXCLUDED AND DISCLAIMED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

14. **Confidential Information.** "Confidential Information" shall mean all information disclosed in writing by one Party to the other Party that is clearly marked "CONFIDENTIAL" or "PROPRIETARY" by the disclosing Party at the time of disclosure or which reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information does not include any information that (i) was already known by the receiving Party free of any obligation to keep it confidential at the time of its disclosure; (ii) becomes publicly known through no wrongful act of the receiving Party; (iii) is rightfully received from a third person without knowledge of any confidential obligation; (iv) is independently acquired or developed without violating any of the obligations under this Agreement; or (v) is approved for release by written authorization of the disclosing Party.

A recipient of Confidential Information shall not disclose the information to any person or entity except for the recipients and/or its employees, contractors and consultants who have a need to know such Confidential Information. The recipient may disclose Confidential Information pursuant to a judicial or governmental request, requirement or order; provided that the recipient shall take all reasonable steps to give prior notice to the disclosing Party.

Confidential Information shall not be disclosed to any third party without the prior written consent of the owner of the Confidential Information. The recipient shall use Confidential Information only for purposes of this Agreement and shall protect Confidential Information from disclosure using the same degree of care used to protect its own Confidential Information, but in no event less than a reasonable degree of care. Confidential Information shall remain the property of the disclosing Party shall be returned to the disclosing Party or destroyed upon request of the disclosing Party. Because monetary damages may be insufficient in the event of a breach or threatened breach of the foregoing provisions, the affected Party may be entitled to seek an injunction or restraining order in addition to such other rights or remedies as may be available under this Agreement, at law or in equity, including but not limited to monetary damages.

15. **General Provisions.**

- a. **Force Majeure.** Neither Party shall be liable to the other, nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is delayed or prevented by reason of Force Majeure, which is defined to mean an event that is beyond the reasonable control of the affected Party and occurs without such Party's fault or negligence.
- b. **Entire Agreement.** This Agreement, including all schedules, exhibits, addenda and any Business Associate Agreement (as that term is used in the Health Insurance Portability and Accountability Act and related regulations) (*see Exhibit C*) are incorporated herein by reference, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this agreement shall be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is asserted.
- c. **Governing Law.** This Agreement shall be governed by the laws of the State of Texas without regard to choice or conflict of law rules.
- d. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or a breach of this Agreement, shall be finally settled by arbitration in Austin, Texas, and shall be resolved under the laws of the State of Texas. The arbitration shall be conducted before a single arbitrator, who may be a private arbitrator, in accordance with the commercial rules and practices of the American Arbitration Association then in effect. Any award, order or judgment pursuant to such arbitration shall be deemed final and binding and may be enforced in any court of competent jurisdiction. The arbitrator may, as part of the arbitration award, permit the substantially prevailing Party to recover all or part of its attorney's fees and other out-of-pocket costs incurred in connection with such arbitration. All arbitration proceedings shall be conducted on a confidential basis. The Parties knowingly, voluntarily, and irrevocably waive their right to a trial by jury.
- e. **No Press Releases without Consent.** Neither Party may use the other Party's name or trademarks, nor issue any publicity or public statements concerning the other Party or the existence or content of this Agreement, without the other Party's prior written consent. Notwithstanding, Customer agrees that ESO may use Customer's name and logo in ESO sales presentations, without Customer's prior written consent, during the Term of this Agreement, but only for the purposes of identifying the Customer as a customer of ESO. Likewise, Customer may use ESO's name and logo to identify ESO as a vendor of Customer.

- f. Aggregate Data Reporting. Customer hereby grants ESO the right to collect and store its data for aggregate reporting purposes, but in no event shall ESO disclose Protected Health Information (“*PHI*”) unless permitted by law. Moreover, ESO will not identify Customer without Customer’s consent.
- g. Compliance with Laws. Both Parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of this Agreement.
- h. Waiver. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. If Customer has made any change to the Agreement that Customer did not bring to ESO’s attention in a way that is reasonably calculated to put ESO on notice of the change, the change shall not become part of the Agreement.
- i. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- j. Taxes and Fees. This Agreement is exclusive of all taxes and fees. Unless otherwise required by law, Customer is responsible for and will remit (or will reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO’s income) assessed in connection with the Services and/or Software provided to Customer under this Agreement.
- k. Independent Contractor. Nothing in this Agreement shall be construed to create: (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates; or (ii) a relationship of employer and employee between the Parties. ESO is an independent contractor and not an agent of Customer.
- l. Counterparts; Execution. This Agreement and any amendments hereto may be executed by the Parties individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. Execution and delivery of this Agreement and any amendments by the Parties shall be legally valid and effective through: (i) executing and delivering the paper copy of the document, (ii) transmitting the executed paper copy of the documents by facsimile transmission or electronic mail in “portable document format” (“*.pdf*”) or other electronically scanned format, or (iii) creating, generating, sending, receiving or storing by electronic means this Agreement and any amendments, the execution of which is accomplished through use of an electronic process and executed or adopted by a Party with the intent to execute this Agreement (i.e. “*electronic signature*” through a process such as DocuSign®). In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought.
- m. Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery, or (iv) fax. Notices shall be sent to the addresses above. No Party to this Agreement shall refuse delivery of any notice hereunder.

[*Signature Page Follows*]

**IN WITNESS WHEREOF**, the undersigned expressly agree and warrant that they are authorized to sign and enter into this Agreement on behalf of the Party for which they sign and have executed this Agreement on the Effective Date first written above.

**ESO:**

**CUSTOMER:**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

**Chris Dillie**

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Printed Name]

**President and CEO**

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[Date]

**EXHIBIT A**  
**SCHEDULE OF SUBSCRIPTION FEES**

Customer has selected and Billing Agent has agreed to pay for the following Services on behalf of Customer:

QUOTE LINE ITEMS					
Product	Quantity	List Price	Discounts	Total Price	Line Item Description
EHR Suite w/ QM & Mobile 600 - 1,250 Calls	1.00	\$3,290.00	\$329.00	\$2,961.00	Annual Recurring Fee - Includes EHR, Quality Management, Analytics, Hospital Link Up, Driver's License Scanning
Billing Standard Interface 600 - 1,250 Incidents	1.00	\$395.00	\$395.00	\$0.00	Annual Recurring Fee - Fee Waived for EMS MC Customer
CAD Integration 600 - 1,250 Incidents	1.00	\$1,495.00	\$149.50	\$1,345.50	Annual Recurring Fee
Cardiac Monitor 600 - 1,250 Incidents	1.00	\$795.00	\$79.50	\$715.50	Annual Recurring Fee.
Fax < 600 Incidents	1.00	\$54.00	\$5.40	\$48.60	Annual Recurring Fee.
HDE - ESO EHR Connection < 2,500 Incidents	1.00	\$495.00	\$0.00	\$495.00	Annual Recurring Fee
Services - Training	2.00	\$995.00	\$0.00	\$1,990.00	2 Days of Onsite Training. One Time Fee
Services - Training Travel Costs	1.00	\$1,500.00	\$0.00	\$1,500.00	Training and Travel Cost - 2 days. One Time Fee.

Full Price	\$10,014.00
Sum of Discounts	\$958.40
Grand Total	\$9,055.60

**PAYMENT TERMS AND PAYMENT MILESTONES**

The subscription year for Services shall begin upon execution of the Subscription Agreement or upon the commencement of active work on software implementation, whichever date comes later. The Subscription Fees are invoiced annually in advance commencing upon execution of this Agreement.

**EXHIBIT B**  
**SUPPORT SERVICES AND SERVICE LEVELS**

This Exhibit describes the software support services (“*Support Services*”) that ESO will provide and the service levels that ESO will meet.

1. **Definitions.** Unless defined otherwise herein, capitalized terms used in this Exhibit shall have the same meaning as set forth in the Agreement.

- (a) “*Customer Service Representative*” shall be the person at ESO designated by ESO to receive notices of Errors encountered by Customer that Customer’s Administrator has been unable to resolve.
- (b) “*Error*” means any failure of the Software to conform in any material respect with its published specifications.
- (c) “*Error Correction*” means a bug fix, patch, or other modification or addition that brings the Software into material conformity with its published performance specifications.
- (d) “*Priority A Error*” means an Error that renders the Software inoperable or causes a complete failure of the Software.
- (e) “*Priority B Error*” means an Error that substantially degrades the performance of the Software or materially restricts Customer’s use of the Software.
- (f) “*Priority C Error*” means an Error that causes only a minor impact on Customer’s use of the Software.
- (g) “*Update*” means any new commercially available or deployable version of the Software, which may include Error Corrections, enhancements or other modifications, issued by ESO from time to time to its Customers.
- (h) “*Normal Business Hours*” means 7:00 am to 7:00 pm Monday through Friday, Central Time Zone.

2. **Customer Obligations.**

Customer will provide at least one administrative employee (the “*Administrator*” or “*Administrators*”) who will handle all requests for first-level support from Customer’s employees with respect to the Software. Such support is intended to be the “front line” for support and information about the Software to Customer’s employees. ESO will provide training, documentation, and materials to the Administrators to enable the Administrators to provide technical support to Customer’s employees. The Administrators will refer any Errors to ESO’s Customer Service Representative that the Administrators cannot resolve, pursuant to Section 3 below; and the Administrators will assist ESO in gathering information to enable ESO to identify problems with respect to reported Errors.

3. **Support Services.**

(a) *Scope.* As further described herein, the Support Services consist of: (i) Error Corrections that the Administrator is unable to resolve and (ii) periodic delivery of Error Corrections and Updates. The Support Services will be available to Customer during normal business hours, to the extent practicable. Priority A Errors encountered outside normal business hours may be communicated to the Customer Service Representative via telephone or email. Priority B and C Errors encountered outside normal business hours shall be communicated via email.

(b) *Procedure.*

- (i) *Report of Error.* In reporting any Error, the Customer’s Administrator will describe to ESO’s Customer Service Representative the Error in reasonable detail and the circumstances under which the Error occurred or is occurring; the Administrator will initially classify the Error as a Priority A, B or C Error. ESO reserves the right to reclassify the Priority of the Error.
- (ii) *Efforts Required.* ESO shall exercise commercially reasonable efforts to correct any Error reported by the Administrator in accordance with the priority level assigned to such Error by the Administrator. Errors shall be communicated to ESO’s Customer Service Representative after hours as indicated below, depending on the priority level of the Error. In the event of an Error, ESO will within the time periods set forth below, depending upon the priority level of the Error, commence verification of the Error; and, upon verification, will commence Error Correction. ESO will work diligently to verify the Error and, once an Error has been verified, and until an Error Correction has been provided to the Administrator, shall use commercially reasonable, diligent efforts to provide a workaround for the Error as soon as reasonably practicable. ESO will provide the Administrator with periodic reports on the status of the Error Correction on the frequency as indicated below.

Priority of Error	Communicating Error to ESO outside Normal Business Hours	Time in Which ESO Will Commence Verification	Frequency of Periodic Status Reports
Priority A	Telephone or email	Within 8 hours of notification	Every 4 hours until resolved
Priority B	Email	Within 1 business day of notification	Every 6 hours until resolved
Priority C	Email	Within two calendar weeks of notification	Every week until resolved

4. **ESO Server Administration.**

ESO is responsible for maintenance of Server hardware. Server administration includes:

- (a) Monitoring and Response
- (b) Service Availability Monitoring
- (c) Backups
- (d) Maintenance
  - (i) Microsoft Patch Management
  - (ii) Security patches to supported applications and related components
  - (iii) Event Log Monitoring
  - (iv) Log File Maintenance
  - (v) Drive Space Monitoring
- (e) Security
- (f) Virus Definition & Prevention
- (g) Firewall

**EXHIBIT C**  
**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“*Agreement*”) is entered into by and between ESO Solutions, Inc. (“*Vendor*”), a Texas corporation, and Customer (“*Covered Entity*”), as of the Effective Date of the Subscription Agreement, for the purpose of setting forth Business Associate Agreement terms between Covered Entity and Vendor. Covered Entity and Vendor each are referred to as a “*Party*” and collectively as the “*Parties*.” This Agreement shall commence on the Effective Date set forth above.

**WHEREAS**, Covered Entity, owns, operates, manages, performs services for, otherwise are affiliated with or are themselves a Covered Entity as defined in the federal regulations at 45 C.F.R. Parts 160 and 164 (the “*Privacy Standards*”) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“*HIPAA*”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“*HITECH*”);

**WHEREAS**, pursuant to HIPAA and HITECH, the U.S. Department of Health & Human Services (“*HHS*”) promulgated the Privacy Standards and the security standards at 45 C.F.R. Parts 160 and 164 (the “*Security Standards*”) requiring certain individuals and entities subject to the Privacy Standards and/or the Security Standards to protect the privacy and security of certain individually identifiable health information (“*Protected Health Information*” or “*PHI*”), including electronic protected health information (“*EPHI*”);

**WHEREAS**, the Parties wish to comply with Privacy Standards and Security Standards as amended by the HHS regulations promulgated on January 25, 2013, entitled the “Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act,” as such may be revised or amended by HHS from time to time:

**WHEREAS**, in connection with Vendor’s performance under its agreement(s) or other documented arrangements between Vendor and Covered Entity, whether in effect as of the Effective Date or which become effective at any time during the term of this Agreement (collectively “*Business Arrangements*”), Vendor may provide services for, or on behalf of, Covered Entity that require Vendor to use, disclose, receive, access, create, maintain and/or transmit health information that is protected by state and/or federal law; and

**WHEREAS**, Vendor and Covered Entity desire that Vendor obtain access to PHI and EPHI in accordance with the terms specified herein;

**NOW, THEREFORE**, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the Parties agree as follows:

1. **Vendor Obligations.**

In accordance with this Agreement and the Business Arrangements, Vendor may use, disclose, access, create, maintain, transmit, and/or receive on behalf of Covered Entity health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the regulations promulgated by HHS in accordance with HIPAA and HITECH, including the Privacy Standards and Security Standards (collectively referred to hereinafter as the “*Confidentiality Requirements*”). All reference to PHI herein shall be construed to include EPHI. PHI shall mean only that PHI Vendor uses, discloses, accesses, creates, maintains, transmits and/or receives for or on behalf of Covered Entity pursuant to the Business Arrangements. The Parties hereby acknowledge that the definition of PHI includes “*Genetic Information*” as set forth at 45 C.F.R. §160.103. To the extent Vendor is to carry out an obligation of Covered Entity under the Confidentiality Requirements, Vendor shall comply with the provision(s) of the Confidentiality Requirements that would apply to Covered Entity (as applicable) in the performance of such obligations(s).

2. **Use of PHI.**

Except as otherwise required by law, Vendor shall use PHI in compliance with this Agreement and 45 C.F.R. §164.504(e). Vendor agrees not to use PHI in a manner that would violate the Confidentiality Requirements if the PHI were used by Covered Entity in the same manner. Furthermore, Vendor shall use PHI for the purpose of performing services for, or on behalf of, Covered Entity as such services are defined in the Business Arrangements. In addition, Vendor may use PHI (i) as necessary for the proper management and administration of Vendor or to carry out its legal responsibilities; provided that such uses are permitted under federal and applicable state law, and (ii) to provide data aggregation services relating to the health care operations of the Covered Entity as defined by 45 C.F.R. § 164.501. Covered Entity also authorizes Vendor to collect and store its data for aggregate reporting, but in no event shall Vendor disclose PHI unless permitted by law. Moreover, Vendor will not identify Covered Entity without consent. Covered Entity authorizes Vendor to de-identify PHI it receives from Covered Entity. All de-identification of PHI must be performed in accordance with the Confidentiality Requirements, specifically 45 C.F.R. §164.514(b).

3. **Disclosure of PHI.**

- 3.1 Subject to any limitations in this Agreement, Vendor may disclose PHI to any third party as necessary to perform its obligations under the Business Arrangements and as permitted or required by applicable law. Vendor agrees not to disclose PHI in a manner that would violate the Confidentiality Requirements if the PHI was disclosed by the Covered Entity in the same manner. Further, Vendor may disclose PHI for the proper management and administration of Vendor; provided that: (i) such disclosures are required by law; or (ii) Vendor: (a) obtains reasonable assurances from any third party to whom the PHI is disclosed that the PHI will be held confidential and used and disclosed only as required by law or for the purpose for which it was disclosed to third party, and (b) requires the third party to agree to immediately notify Vendor of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Vendor shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement of which it becomes aware. Such report shall be made within five (5) business days of Vendor becoming aware of such use or disclosure.
- 3.2 If Vendor uses or contracts with any agent, including a subcontractor (collectively “**Subcontractors**”) that uses, discloses, accesses, creates, receives, maintains or transmits PHI on behalf of Vendor, Vendor shall require all Subcontractors to agree in writing to the same restrictions and conditions that apply to Vendor under this Agreement. In addition to Vendor’s obligations under Section 9, Vendor agrees to mitigate, to the extent practical and unless otherwise requested by the Covered Entity, any harmful effect that is known to Vendor and is the result of a use or disclosure of PHI by Vendor or any Subcontractor in violation of this Agreement. Additionally, Vendor shall ensure that all disclosures of PHI by Vendor and its Subcontractors comply with the principle of “**minimum necessary use and disclosure**,” (i.e., in accordance with 45 C.F.R. §164.502(b), only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed).

4. **Individual Rights Regarding Designated Record Sets.**

If Vendor maintains a Designated Record Set on behalf of Covered Entity, Vendor shall: (i) provide access to and permit inspection and copying of PHI by Covered Entity under conditions and limitations required under 45 C.F.R. §164.524, as it may be amended from time to time; and (ii) amend PHI maintained by Vendor as required by Covered Entity. Vendor shall respond to any request from Covered Entity for access by an individual within ten (10) business days of such request and shall make any amendment requested by Covered Entity within twenty (20) business days of such request. Any information requested under this **Section 4** shall be provided in a form or format requested, if it is readily producible in such form or format. Vendor may charge a reasonable fee based upon Vendor’s labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Vendor shall notify Covered Entity within ten (10) business days of receipt of any request for access or amendment by an individual.

5. **Accounting of Disclosures.**

Vendor shall make available to Covered Entity within ten (10) business days of a request by Covered Entity the information required for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528 (or such shorter time as may be required by state or federal law). Such accounting must be provided without cost if it is the first accounting requested within any twelve (12) month period. For subsequent accountings within the same twelve (12) month period, Vendor may charge a reasonable fee based upon Vendor’s labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) only after Vendor informs Covered Entity and Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination or expiration of this Agreement and with respect to any disclosure, whether on or before the termination of this Agreement, shall continue for a minimum of seven (7) years following the date of such disclosure.

6. **Withdrawal of Authorization.**

If the use or disclosure of PHI under this Agreement is based upon an individual’s specific authorization regarding the use of his or her PHI, and: (i) the individual revokes such authorization in writing; (ii) the effective date of such authorization has expired; or (iii) the authorization is found to be defective in any manner that renders it invalid for whatever reason, then Vendor agrees, if it has received notice from Covered Entity of such revocation or invalidity, to cease the use and disclosure of any such individual’s PHI except to the extent Vendor has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.

7. **Records and Audit.**

Vendor shall make available to HHS or its agents its internal practices, books, and records relating to the compliance of Vendor and Covered Entity with the Confidentiality Requirements, such internal practices, books and records to be provided in the time and manner designated by HHS or its agents.

8. **Implementation of Security Standards; Notice of Security Incidents.**

Vendor will comply with the Security Standards and, by way of example and not limitation, use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. In accordance with the Security Standards, Vendor will implement administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of the PHI that it uses,

discloses, accesses, creates, receives, maintains or transmits. To the extent feasible, Vendor will use commercially reasonable efforts to ensure that the technology safeguards used by Vendor to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI. Vendor will promptly report to Covered Entity any Security Incident of which it becomes aware; provided, however, that Covered Entity acknowledges and shall be deemed to have received notice from Vendor that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Vendor; and (ii) immaterial incidents such as “pinging” or “denial of services” attacks. At the request of Covered Entity, Vendor shall identify: the date of the Security Incident, the scope of the Security Incident, Vendor’s response to the Security Incident, and to the extent permitted by law, the identification of the party responsible for causing the Security Incident, if known.

9. **Data Breach Notification and Mitigation.**

9.1 **HIPAA Data Breach Notification and Mitigation.** Vendor agrees to implement reasonable systems for the discovery and prompt reporting of any “breach” of “unsecured PHI” as those terms are defined by 45 C.F.R. §164.402 (“**HIPAA Breach**”). The Parties acknowledge and agree that 45 C.F.R. §§164.404 and 164.410, as describe below in this **Section 9.1**, govern the determination of the date of a HIPAA Breach. In the event of any conflict between this **Section 9.1** and the Confidentiality Requirements, the more stringent requirements shall govern. Following the discovery of a HIPAA Breach, Vendor will notify Covered Entity immediately and in no event later than five (5) business days after Vendor discovers such HIPAA Breach unless Vendor is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to Vendor or, by exercising reasonable diligence, would have been known to Vendor. Vendor will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of Vendor. No later than ten (10) business days following a HIPAA Breach, Vendor shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et. seq.* This **Section 9.1** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI.

9.2 **Data Breach Notification and Mitigation Under Other Laws.** In addition to the requirements of **Section 9.1**, Vendor agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including, but not limited to, PHI and referred to hereinafter as “**Individually Identifiable Information**”) that, if misused, disclosed, lost or stolen would trigger an obligation under one or more State data breach notification laws (each a “**State Breach**”) to notify the individuals who are the subject of the information. Vendor agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Vendor shall promptly: (i) notify Covered Entity within five (5) business days of such misuse, disclosure, loss or theft; and (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach. This **Section 9.2** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI or Individually Identifiable Information.

10. **Obligations of Covered Entity.**

10.1 **Notification Requirement.** Covered Entity shall notify Vendor of:

- a. Any limitation(s) in Covered Entity’s notice of privacy practices in accordance with 45 CFR 164.520 to the extent that such changes may affect Vendor’s use or disclosure of PHI;
- b. Any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Vendor’s use or disclosure of PHI; and
- c. Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Vendor’s use or disclosure of PHI.

10.2 **Permissible Requests.** Covered Entity agrees that it will not request Vendor to use or disclose PHI in any manner that would not be permissible under the Confidentiality Requirements if done by Covered Entity.

11. **Terms and Termination.**

11.1 **Termination.** This Agreement shall remain in effect until terminated in accordance with the terms of this **Section 11**; provided, however, that termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

11.2 **Termination with Cause.** Either Party may immediately terminate this Agreement if either of the following events have occurred and are continuing to occur:

- a. Vendor or Covered Entity fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) business days after written notice of such failure has been given; or
- b. Vendor or Covered Entity violates any provision of the Confidentiality Requirement or applicable federal or state privacy law relating to its obligations under this Agreement.

11.3 **May Terminate Business Arrangements in Event of for Cause Termination.** Termination of this Agreement for either of the two reasons set forth in **Section 11.2** above shall be cause for immediate termination of any Business Arrangement pursuant to which Vendor uses, discloses, accesses, receives, creates, or transmits PHI for or on behalf of Covered Entity.

11.4 **Termination Upon Conclusion of Business Arrangements.** Upon the expiration or termination of all Business Arrangements, either Covered Entity or Vendor may terminate this Agreement by providing written notice to the other Party.

11.5 **Return of PHI Upon Termination.** Upon termination of this Agreement for any reason, Vendor agrees either to return all PHI or to destroy all PHI received from Covered Entity that is in the possession or control of Vendor or its Subcontractors. In the case of PHI for which it is not feasible to return or destroy, Vendor shall extend the protection of this Agreement to such PHI and limit further uses and disclosure of such PHI. Vendor shall comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI. This **Section 11.5** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI.

12. **No Warranty.**

PHI IS PROVIDED SOLELY ON AN "AS IS" BASIS. THE PARTIES DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

13. **Ineligible Persons.**

Vendor represents and warrants to Covered Entity that its directors, officers, and key employees: (i) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) of any state healthcare program (collectively, the "**Healthcare Programs**"); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Healthcare Programs; and (iii) are not under investigation or otherwise aware of any circumstances which may result in Vendor being excluded from participation in the Healthcare Programs (collectively, the "**Warranty of Non-exclusion**"). Vendor representations and warranties underlying the Warranty of Non-exclusion shall be ongoing during the term, and Vendor shall immediately notify Covered Entity of any change in the status of the representations and warranties set forth in this **Section 13**. Any breach of this **Section 13** shall give Covered Entity the right to terminate this Agreement immediately.

14. **Equitable Relief.**

The Parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause irreparable harm, the amount of which may be difficult to ascertain, and therefore agree that either Party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief deemed appropriate. Such right shall be in addition to the remedies otherwise available at law or in equity.

15. **Entire Agreement.**

This Agreement constitutes the complete agreement between Vendor and Covered Entity relating to the matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party to this Agreement; *provided, however* that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that a Party believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, that Party may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to the other Party which shall be effective thirty (30) calendar days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns.

## BUSINESS ASSOCIATE AGREEMENT

This [Amended and Restated] Business Associate Agreement (the “Agreement”) is made effective the 12th day of August, 2016, by and between the City of Olivette hereinafter referred to as “Covered Entity,” and EMS Management & Consultants, Inc., hereinafter referred to as “Business Associate” (individually, a “Party” and collectively, the “Parties”).

### WITNESSETH:

WHEREAS, the Parties wish to enter into a Business Associate Agreement to ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA Privacy and Security Rules”) (45 C.F.R. Parts 160 and 164) and the “Red Flag Rules” as found at 16 C.F.R. § 681.1 and applicable to creditors subject to the administrative enforcement of the FCRA by the Federal Trade Commission pursuant to 15 U.S.C. § 1681s(a)(1); and

WHEREAS, the Health Information Technology for Economic and Clinical Health (“HITECH”) Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the “HIPAA Privacy and Security Rules” include all amendments thereto set forth in the HITECH Act and any accompanying regulations); and

WHEREAS, the Parties have entered into a written or oral arrangement or arrangements (the “Agreements”) whereby Business Associate will provide certain services to Covered Entity and, pursuant to such Agreements, Business Associate may be considered a “business associate” of Covered Entity as defined in the HIPAA Privacy and Security Rules; and

WHEREAS, Business Associate may have access to Protected Health Information or Electronic Protected Health Information (as defined below) in fulfilling its responsibilities under the Agreements; [and

WHEREAS, prior to enactment of the HITECH Act, Covered Entity and Business Associate previously entered into a Business Associate Agreement and now intend this Agreement to supersede the prior agreement in order to comply with the requirements of the HITECH Act;] and

WHEREAS, Covered Entity wishes to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a Business Associate to Covered Entity; and

WHEREAS, in the event that Business Associate is engaged to perform any activity in connection with any “covered account” of Covered Entity as defined in 16 C.F.R. § 681.1 (commonly referred to as the “Red Flag Rules” and applicable to any “creditor” or any “service provider” providing any service to such creditor with regard to a covered account), Business Associate agrees to fully adopt and comply with the Red Flag Rules as are currently in effect and as may be promulgated in the future, including but not limited to the adoption of a Red Flag program that is compliant with applicable federal regulations, and to take all necessary and appropriate steps to ensure that its activities are conducted in accordance with the Red Flag Rules designed to detect, prevent and mitigate the risk of identity theft.

THEREFORE, in consideration of the Parties' continuing obligations under the Agreements, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

## I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, or the Red Flag Rules, the HIPAA Privacy and Security Rules and the Red Flag Rules in effect at the time shall control. Where provisions of this Agreement are different than those mandated by the HIPAA Privacy and Security Rules or the Red Flag Rules, but are nonetheless permitted by the HIPAA Privacy and Security Rules or the Red Flag Rules, the provisions of this Agreement shall control.

The term "Breach" means the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. The term "Breach" does **not** include: (1) any unintentional acquisition, access, or use of protected health information by any employee or individual acting under the authority of a covered entity or business associate if (a) such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate, and (b) such information is not further acquired, accessed, used, or disclosed by any person; or (2) any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; and (3) any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.

The term "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.

The term "HIPAA Privacy and Security Rules" refers to 45 C.F.R. Parts 160 and 164 as currently in effect or hereafter amended.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual. "Protected Health Information" includes, without limitation, "Electronic Protected Health Information," as defined below.

The term "Electronic Protected Health Information" means Protected Health Information which is transmitted by or maintained in Electronic Media (as now or hereafter defined in the HIPAA Privacy and Security Rules).

The term “Red Flag Rules” refers to the provisions found at 16 C.F.R. § 681.1 as applicable to financial institutions and creditors subject to the administrative enforcement of the FCRA by the Federal Trade Commission pursuant to 15 U.S.C. § 1681s(a)(1).

The term “Red Flag” has the same meaning as provided within 16 C.F.R. § 681.1(b)(9) and means a pattern, practice, or specific activity that indicates the possible existence of identity theft.

The term “Secretary” means the Secretary of the Department of Health and Human Services.

The term “Unsecured Protected Health Information” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance published in the Federal Register at 74 Fed. Reg. 19006 on April 27, 2009 and in annual guidance published thereafter.

## II. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

a. Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreements, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes “minimum necessary” for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, disclose only Protected Health Information that is contained in a limited data set (as defined in Section 164.514(e)(2) of the HIPAA Privacy and Security Rules), unless the person or entity to whom Business Associate is making the disclosure requires certain direct identifiers in order to accomplish the intended purpose of the disclosure, in which event Business Associate may disclose only the minimum necessary amount of Protected Health Information to accomplish the intended purpose of the disclosure.

b. Business Associate may use Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

c. Business Associate may disclose Protected Health Information in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:

1. the disclosures are required by law; or

2. Business Associate obtains reasonable assurances from the third parties to whom the Protected Health Information is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.

d. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes “minimum necessary” for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, access, use, and request only Protected Health Information that is contained in a limited data set (as defined in Section 164.514(e)(2) of the HIPAA Privacy and Security Rules), unless Business Associate requires certain direct identifiers in order to accomplish the intended purpose of the access, use, or request,

in which event Business Associate may access, use, or request only the minimum necessary amount of Protected Health Information to accomplish the intended purpose of the access, use, or request. Covered Entity shall determine what quantum of information constitutes the “minimum necessary” amount for Business Associate to accomplish its intended purposes.

### III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.

b. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.

c. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement. Specifically, Business Associate will:

1. implement the administrative, physical, and technical safeguards set forth in Sections 164.308, 164.310, and 164.312 of the HIPAA Privacy and Security Rules that reasonably and appropriately protect the confidentiality, integrity, and availability of any Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with Section 164.316 of the HIPAA Privacy and Security Rules, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in Sections 164.308, 164.310, and 164.312; and

2. report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which Business Associate becomes aware. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. For purposes of this Agreement, “Security Incident” means the successful unauthorized access, use, disclosure, modification, or destruction of Protected Health Information or interference with system operations in an information system, of which Business Associate has knowledge or should, with the exercise of reasonable diligence, have knowledge, excluding (i) “pings” on an information system firewall; (ii) port scans; (iii) attempts to log on to an information system or enter a database with an invalid password or user name; (iv) denial-of-service attacks that do not result in a server being taken offline; or (v) malware (*e.g.*, a worms or a virus) that does not result in unauthorized access, use, disclosure, modification or destruction of Protected Health Information.

d. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

e. Business Associate agrees to comply with any requests for restrictions on certain disclosures of Protected Health Information to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules and of which Business Associate has been notified by Covered Entity. In addition, and notwithstanding the provisions of Section 164.522 (a)(1)(ii), Business Associate agrees to comply with an individual’s request to restrict

disclosure of Protected Health Information to a health plan for purposes of carrying out payment or health care operations if the Protected Health Information pertains solely to a health care item or service for which Covered Entity has been paid by in full by the individual or the individual's representative.

f. At the request of The Covered Entity and in a reasonable time and manner, not to extend ten (10) business days, Business Associate agrees to make available Protected Health Information required for Covered Entity to respond to an individual's request for access to his or her Protected Health Information in accordance with Section 164.524 of the HIPAA Privacy and Security Rules. If Business Associate maintains Protected Health Information electronically, it agrees to make such Protected Health Information available electronically to the applicable individual or to a person or entity specifically designated by such individual, upon such individual's request.

g. At the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available Protected Health Information required for amendment by Covered Entity in accordance with the requirements of Section 164.526 of the HIPAA Privacy and Security Rules.

h. Business Associate agrees to document any disclosures of and make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy and Security Rules.

i. Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary for the purpose of determining Covered Entity's compliance with the HIPAA Privacy and Security Rules, in a time and manner designated by the Secretary.

j. Business Associate agrees that, while present at any Covered Entity facility and/or when accessing Covered Entity's computer network(s), it and all of its employees, agents, representatives and subcontractors will at all times comply with any network access and other security practices, procedures and/or policies established by Covered Entity including, without limitation, those established pursuant to the HIPAA Privacy and Security Rules and the Red Flag Rules.

k. Business Associate agrees that it will not directly or indirectly receive remuneration in exchange for any Protected Health Information of an individual without the written authorization of the individual or the individual's representative, except where the purpose of the exchange is:

1. for public health activities as described in Section 164.512(b) of the Privacy and Security Rules;

2. for research as described in Sections 164.501 and 164.512(i) of the Privacy and Security Rules, and the price charged reflects the costs of preparation and transmittal of the data for such purpose;

3. for treatment of the individual, subject to any further regulation promulgated by the Secretary to prevent inappropriate access, use, or disclosure of Protected Health Information;

4. for the sale, transfer, merger, or consolidation of all or part of Business Associate and due diligence related to that activity;

5. for an activity that Business Associate undertakes on behalf of and at the specific request of Covered Entity;

6. to provide an individual with a copy of the individual's Protected Health Information pursuant to Section 164.524 of the Privacy and Security Rules; or

7. other exchanges that the Secretary determines in regulations to be similarly necessary and appropriate as those described in this Section III.k.

l. Business Associate agrees that it will not directly or indirectly receive remuneration for any written communication that encourages an individual to purchase or use a product or service without first obtaining the written authorization of the individual or the individual's representative, unless:

1. such payment is for a communication regarding a drug or biologic currently prescribed for the individual and is reasonable in amount (as defined by the Secretary); or

2. the communication is made on behalf of Covered Entity and is consistent with the terms of this Agreement.

m. Business Associate agrees that if it uses or discloses patients' Protected Health Information for marketing purposes, it will obtain such patients' authorization before making any such use or disclosure.

n. Business Associate agrees to implement a reasonable system for discovery of breaches and method of risk analysis of breaches to meet the requirements of HIPAA, The HITECH Act, and the HIPAA Regulations, and shall be solely responsible for the methodology, policies, and procedures implemented by Business Associate.

o. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a reasonable time and manner as designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

p. Business Associate agrees to mitigate, to the extent reasonably practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

q. State Privacy Laws. Business Associate shall understand and comply with state privacy laws to the extent that state privacy laws are not preempted by HIPAA or The HITECH Act.

r. Business Associate acknowledges that in the event Business Associate violates subsections (k), (l) or (m) hereof, the provisions of section 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner as such provisions apply to Covered Entity.

IV. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS

a. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

b. Following the discovery of a Breach of Unsecured Protected Health Information, Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than forty-five (45) calendar days after discovery of the Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

c. Notwithstanding the provisions of Section IV.b., above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:

1. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or

2. if the statement is made orally, Business Associate shall document the statement, including the identity of the official making it, and delay such notification for no longer than thirty (30) days from the date of the oral statement unless the official submits a written statement during that time.

Following the period of time specified by the official, Business Associate shall promptly deliver a copy of the official's statement to Covered Entity.

d. The Breach notification provided shall include, to the extent possible:

1. the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;

2. a brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;

3. a description of the types of Unsecured Protected Health Information that were 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);

4. any steps individuals should take to protect themselves from potential harm resulting from the Breach;

5. a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and

6. 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.

e. Business Associate shall provide the information specified in Section IV.d., above, to Covered Entity at the time of the Breach notification if possible or promptly thereafter as information becomes available. Business Associate shall not delay notification to Covered Entity that a Breach has occurred in order to collect the information described in Section IV.d. and shall provide such information to Covered Entity even if the information becomes available after the forty-five (45)-day period provided for initial Breach notification.

## V. WARRANTIES OF BUSINESS ASSOCIATE

Business Associate warrants:

a. That its internal practices, policies, and records relating to the use and disclosure of Protected Health Information will comply with the HIPAA Privacy and Security Rules; and

b. That it will train all of its employees, agents, representatives, and subcontractors on the network access and other security practices, procedures and/or policies established by Covered Entity including, without limitation, those established pursuant to the HIPAA Privacy and Security Rules and the Red Flag Rules prior to permitting such employees, agents, representatives, and subcontractors to be present at any Covered Entity facility and/or to access Covered Entity's computer network(s).

## VI. OBLIGATIONS OF COVERED ENTITY

a. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520 of the HIPAA Privacy and Security Rules.

b. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate's use and disclosure of such Protected Health Information.

## VII. REQUIRED COMPLIANCE WITH RED FLAG RULES

In the event that Business Associate is engaged to perform an activity in connection with any "covered account" as defined in 16 C.F.R. § 681.1 (as applicable to Covered Entity as a "creditor" and therefore to Business Associate as a "service provider" providing any service to Covered Entity), Business Associate agrees to: (i) fully adopt and comply with the Red Flag Rules currently in effect and as may be promulgated in the future; (ii) adopt a Red Flag program that is compliant with federal regulations as promulgated in 16 C.F.R. § 681.1; and (iii) take all necessary and appropriate steps to ensure that its activities undertaken as a part of this Agreement

are conducted in accordance with the Red Flag Rules and its Red Flag program, including, without limitation, ensuring the adoption of and continued compliance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft, detecting any Red Flag that may arise during the term of this Agreement, reporting any such Red Flag to Covered Entity, and taking any such further steps as may be necessary to prevent or mitigate identity theft.

#### VIII. TERM AND TERMINATION

a. Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate upon the later of the following events: (i) in accordance with Section VIII.c., when all of the Protected Health Information provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity or, if such return or destruction is infeasible, when protections are extended to such information; or (ii) upon the expiration or termination of the last of the Agreements.

b. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall have the right to immediately terminate this Agreement and the Agreements. If termination is not feasible, Covered Entity shall report such violation to the Secretary.

c. Effect of Termination.

1. Except as provided in paragraph 2. of this subsection, upon termination of this Agreement, the Agreements or upon request of Covered Entity, whichever occurs first, Business Associate shall within ten (10) days return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Neither Business Associate nor its subcontractors or agents shall retain copies of the Protected Health Information.

2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide within ten (10) days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

#### IX. MISCELLANEOUS

a. Indemnification. Business Associate shall indemnify, defend and hold harmless Covered Entity, its directors, officers, employees, contractors and agents, against, and in respect of, any and all claims, losses, expenses, costs, damages, obligations, penalties, judgments, fines, assessments, awards, liabilities, or other expenses of any kind and nature whatsoever, including, without limitation, attorneys' fees, expert witness fees, and costs of investigation, litigation, or dispute resolutions, relating to or arising out of any breach or alleged breach of this Agreement, or any Breach, by Business Associate or subcontractors or agents of Business Associate which Covered Entity may incur by reason of Business

Associate's breach of or failure to perform any of its obligations pursuant to this Agreement and/or incurred by or on behalf of Business Associate in connection with the defense thereof.

b. No Rights in Third Parties. Except as expressly stated herein, in the HIPAA Privacy and Security Rules, or in the Red Flag Rules, the Parties to this Agreement do not intend to create any rights in any third parties.

c. Survival. The obligations of Business Associate under Section VIII(c) of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Agreements, and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

d. Amendment. This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Agreement to conform to any changes in the HIPAA Privacy and Security Rules or Red Flag Rules as are necessary for Covered Entity to comply with the current requirements of the HIPAA Privacy and Security Rules, the Health Insurance Portability and Accountability Act, and the Red Flag Rules. In addition, in the event that either Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy and Security Rules or any other applicable legislation including, but not limited to, the Red Flag Rules, then such Party shall notify the other Party of its belief in writing. For a period of up to thirty (30) days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty (30)-day period, the Agreement fails to comply with the HIPAA Privacy and Security Rules, the Red Flag Rules or any other applicable legislation, then either Party has the right to terminate this Agreement and the underlying arrangement upon written notice to the other party.

e. Assignment. Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

f. Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

g. Governing Law. To the extent this Agreement is not governed exclusively by the HIPAA Privacy and Security Rules, the Red Flag Rules, or other provisions of federal statutory or regulatory law, it will be governed by and construed in accordance with the laws of the state in which Covered Entity has its principal place of business.

h. No Waiver. No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

i. Interpretation. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy and Security Rules and the Red Flag Rules.

j. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

k. Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.

l. Certain Provisions Not Effective in Certain Circumstances. The provisions of this Agreement relating to the HIPAA Security Rule shall not apply to Business Associate if Business Associate does not receive any Electronic Protected Health Information from or on behalf of Covered Entity.

m. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, The HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purpose. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and compliance with these rules.

n. Ownership of Information. Covered Entity holds all right, title, and interest in and to the PHI and Business Associate does not hold and will not acquire by virtue of this Agreement or by virtue of providing goods or services to Covered Entity, any right, title, or interest in or to the PHI or any portion thereof.

o. Right to Injunctive Relief. Business Associate expressly acknowledges and agrees that the breach, threatened breach, by it of any provision of this Agreement may cause Covered Entity to be irreparably harmed and that Covered Entity may not have an adequate remedy at law. Therefore, Business Associate agrees that upon such breach, or threatened breach, Covered Entity will be entitled to seek injunctive relief to prevent Business Associate from commencing or continuing any action constituting such breach without having to post a bond or other security and without having to prove the inadequacy of any other available remedies. Nothing in this paragraph will be deemed to limit or abridge any other remedy available to Covered Entity at law or in equity

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

**Business Associate:**

**Covered Entity:**

**EMS Management & Consultants, Inc.**

**City of Olivette**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**CITY COUNCIL AGENDA SUBMISSION  
SEPTEMBER 13, 2016**

**Agenda Item:**

Party in the Park – Special Events Liquor License – Fallon’s Bar and Grill

**Description:**

The annual special event, Party in the Park, sponsored by the City of Olivette will be held on Friday, September 23<sup>rd</sup> at Warson Park from 6:30-10 pm. Fallon’s Bar and Grill, located in Olivette, has applied for a special event liquor license sell beer and wine, for consumption on site. The application meets and conforms to the requirements established by City ordinance.

**Recommended Action:**

Motion to approve a Special Event Liquor License to Fallon’s Bar & Grill for Party in the Park on Friday, September 23, 2016 at Warson Park.

**Attachments:**

- Fallon’s liquor license temporary sale application
- Memo from Police Chief Rick Knox

**Submitted by:**

*Beverly Tucker Knight*  
**DEPARTMENT HEAD**

# Memo

To: Barbara Sondag, City Manager  
From: Rick Knox, Chief of Police  
Date: 9-13-2016  
Re: Criminal Record Check of Applicants for Liquor License

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Criminal record checks were conducted by the Olivette Police Department on the applicant of Fallon's Bar & Grill Olivette Liquor License for the Olivette on The GO Festival event 9-23-2016. Fallon's Bar & Grill will be the only vender serving alcoholic beverages. It was revealed that there were no concerns from law enforcement; therefore, I would recommend approval of application for liquor license for these businesses establishment, as per Olivette Municipal Ordinance.

**LIQUOR LICENSE  
 TEMPORARY SALE APPLICATION**

Check all that apply below:

- Picnic license.**  
 Temporary sale of all kinds of intoxicating liquor at retail by the drink for consumption on the premises where sold by any church, school, civic, service, fraternal, veteran, political, charitable club or organization between the hours of 11:00 a.m. and midnight daily for sale at a picnic, bazaar, fair, or similar gathering. The fee for this license shall be \$37.50.
- Special event.**  
 Licensed to sell intoxicating liquor by the drink for consumption on the premises where sold for the temporary sale of intoxicating liquor at a special event between the hours of 11:00 a.m. and midnight daily. Said permit shall be issued only for the day or days named therein and it shall not authorize the sale of the aforesaid beverages for more than seven days by any said organization as described above in any fiscal year. The fee for this license shall be \$37.50.

**EVENT INFORMATION:**

Name of Establishment/Event Sponsor: City of Olivette  
 Address where sales will occur: Warson Park 9723 Grandview Olivette, MO 63132  
 Dates of Event: 9-23-2016 Hours of event: 6:30-10:00 pm

**APPLICANT INFORMATION:**

Applicant Name:		
Mailing Address: 9200 Olive Boulevard, Suite 116		
City: Olivette	State: MO	Zip Code: 63132
Phone Number: (314) 991-9800	E-mail Address:	
Name of Business/Organization representing: Fallon's Inc., d.b.a. Fallon's Bar and Grill		
Applicant Relation to Business/Organization requesting Temporary Liquor License:		

**LICENSEE INFORMATION:**

Name of Business/Organization: Fallon's Inc., d.b.a. Fallon's Bar and Grill		
Mailing Address: 9200 Olive Boulevard, Suite 116		
City: Olivette	State: MO	Zip Code: 63132
Phone Number: (314) 991-9800	E-mail Address:	
Does the Business/Organization hold a valid Liquor License? <input checked="" type="radio"/> YES <input type="radio"/> NO*	Municipality name of valid liquor license: City of Olivette	Liquor License Nos.
* If the Business/Organization does not hold a valid Liquor License with the City of Olivette or any other community within the State of Missouri, the applicant must complete the form attached to this application.		

Applicant agrees to comply with the provision of the ordinances of the City of Olivette and the State of Missouri in relation to the regulation and control of delivery of the intoxicating liquor. Applicant authorizes the Olivette Police Department to conduct a criminal record check of the individuals contained within this Application.

By signing below, you certify that the information given in this application is true to the best of your knowledge and belief and that the license is non transferable.

Signature of applicant: 



**CITY COUNCIL AGENDA SUBMISSION**  
**September 13, 2016**

**Agenda Item:**

Request for Document Destruction – Finance Department

**Description:**

The Finance Department is requesting to securely destroyed documents according retention classifications adopted with Ordinance #2552. Record classification and a description of the items are contained within the accompanying memo.

**Recommended Action:**

Approve secure destruction of documents as classified and described in memo.

**Attachments:**

1. Document Destruction Memo Dated 9-6-2016

**Funding Request:**

None

**Submitted by:**

*Darren Mann, CPA*  
**DEPARTMENT HEAD**



## Memorandum

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To: City Council  
 From: Darren Mann, Finance Director  
 Subject: Document Destruction  
 Date: September 6, 2016

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The following documents are requested to be securely destroyed under the following document retention classifications adopted with Ordinance #2552. Relevant pages of retention policy containing the classification of documents requested for destruction are attached.

<u>Classification</u>	<u>Description</u>	<u>Dates</u>
GS011	Annual Sales Tax Reports (Receipts)	Jul 1999 – Jun 2013
Muni0753	Assessed Valuation Adjustments (Tax Assessment Files)	Tax Year 2000 & 2001
Muni0753	Taxes Paid Under Protest (Tax Assessment Files)	Tax Year 2000 & 2001
GS011	Road & Bridge, Capital Improvement, Cigarette, Fire Operations, Gas and Motor Vehicle, Local Option Use, Park, 1% Sales, and Personal Property & Auto Tax Receipts (Receipts)	Mar 1994 – Feb 2005
GS010	Bank Statements (Banking Records)	Mar 2000 – Feb 2002, Mar 2001 – Jun 2003,
GS010	Payroll and Pooled Cash Statements (Banking Records)	Mar 2004 – Feb 2005
Muni0753	Tax Sale Records (Tax Assessment Files)	Tax Year 1997 - 2003
Muni0749	Tax Collections (Real Estate Tax Records)	Tax Year 2001 - 2003
GS010	Cancelled Checks (Banking Records)	Oct 2005 – Jul 2006
GS010	Bank Reconciliations - FSA (Banking Records)	1999 - 2006
GS010	Bank Reconciliations 75 <sup>th</sup> Anniversary (Banking Records)	2005
GS010	Bank Reconciliations - Escrow (Banking Records)	2005 - 2006
GS010	Bank Reconciliations – Sewer Lateral (Banking Records)	2005 - 2007
GS010	Deposit Slips – Pooled Cash (Banking Records)	2006

### **Recommendation**

Approved destruction of the documents described as classified.

**CITY OF OLIVETTE  
CITY COUNCIL MEETING MINUTES  
August 23, 2016**

The Olivette City Council met on August 23, 2016 at 7:00 PM in the Council Chambers at Olivette City Hall located at 9473 Olive Boulevard, Olivette, Missouri. Mayor Ruth Springer called the meeting to order at approximately 7:05 PM.

**Item #1 – Roll call**

On roll call, the following persons were present: Mayor Ruth Springer, Chairman Pro-tem J. Gregory Carl, and Council Member Missy Waldman. Mayor Springer stated that Council Member Maxine Weil will be arriving shortly, and Council Member Suzanne Sewell is absent, with excuse.

Also in attendance were City Manager Barbara Sondag, City Attorney Paul Martin, Police Chief Rick Knox, Fire Chief Scott Avery, Planning & Community Development Director Carlos Trejo, Public Works Director Bruce McGregor, Parks & Recreation Director Beverly Tucker Knight and City Clerk Myra Bennett.

**Item #2 – Communications**

City Clerk Bennett noted that no written communications were submitted for the August 23, 2016 City Council meeting.

**Item #3 – City Manager’s Report**

City Manager Sondag reported the following:

- Progress continues on the new City Center. Exterior walls have been placed, and the building is “buttoned up”.
- A CodeRed update was sent out today regarding the Old Bonhomme Road project to let residents know that the eastbound lane of Old Bonhomme Road between Dielman Road and Olive Boulevard will be closed beginning Wednesday, August 24th, 2016. Traffic flow will be one-way westbound from Dielman to Olive. Construction will begin on the south side of Old Bonhomme at Dielman and work westward. Sidewalk construction along Stacy Park will continue once AT&T and Ameren UE complete underground cable relocations. It was also noted that the project is slightly behind schedule, primarily due to the recent weather. The project was originally scheduled to be completed by the end of October; however, the project should be complete in November. No major backups have been reported with the start of school.
- The North Price Road improvement project is basically completed, with the exception of some landscaping.
- Several areas of the website have been updated, to make the site more user friendly for residents.
- The St. Louis Post Dispatch has had several articles regarding a Consolidated Administrative and Support Program for fire services, which is being reviewed by five cities, including Clayton, Brentwood, Richmond Heights, Rock Hill and Maplewood. The primary reason for the study was to determine if shared services could reduce costs for cities. The City of Olivette is not involved in this process at this time; however, will continue to keep an eye on the process to see if this is something to consider in the future.

*(City Council Member Maxine Weil entered the meeting at approximately 7:19 PM.)*

- The Planning and Community Development status report contains an inventory of the Warson-Baur Industrial Park area. The Planning and Community Development Department will continue to work with Finance Director Mann to prepare additional inventories of the other industrial areas within the city.
- The Public Works Department status report notes that they have been working on pavement replacement at White Rose; in addition, they have striped Dielman Industrial Drive.
- The Parks and Recreation Department status report notes that over 400 children attended the various city summer camps. In addition, it notes improvements to the Community Center, including creation of a "lecture room".
- Upcoming events include the following:
  - Party in Park, September 23<sup>rd</sup> at Warson Park
  - Coffee with the Mayor, tomorrow morning, 8:45 AM at City Hall
  - Turkey Trot, November 24<sup>th</sup>, 8:00 AM at Stacy Park

Chairman Pro-tem Carl stated that he drove by the new City Center and the North Price project.

Council Member Weil commended Parks and Recreation Director Tucker-Knight for the attendance at the various summer camp programs.

Mayor Springer noted that the deadline for the Request for Proposals (RFP) for redevelopment of the old city hall site is August 31<sup>st</sup> at 2:00 PM.

Council Member Waldman thanked the City Manager and staff for improvements to the way in which updates and information are being communicated to the public.

#### **Item #4 – City Council Reports**

Council Member Waldman stated that she attended the Planning and Community Design Commission meeting on August 18<sup>th</sup>. Actions taken included the following:

- Approved a Petition for new home at 701 Payson Drive and residential addition at 817 New Castle Drive.
- Deferred a petition for a residential addition at 1115 Magnet Drive; there was no one present representing the petition.
- Approved a petition to amend the ordinance authorizing the Special Permit Use for 9626 Olive Boulevard, to permit operations for LuLu's Asian Kitchen and allow outdoor seating. Requested a landscape plan layout of the seating area be brought back for Commission review.
- Approved a petition for exterior improvements at 9334 Dielman Industrial Drive, Charter Communications.
- Deferred discussion on a draft ordinance amending Chapter 440 Communications Towers, and review procedures outlined throughout Title IV Land Use Code.

Council Member Weil and Chairman Pro-tem Carl both indicated that they have no reports at this time.

Mayor Springer noted that she attended a legislative committee meeting for the St. Louis Metro Municipal League. She stated that they are discussing items they would like to see addressed during this legislative session. In addition, they are preparing a policy statement, which is currently in draft form. Mayor Springer stated that the committee plans to meet two to three more times to finalize the policy statement, and she will share this policy with the City Council, once it is completed.

**Item #5 – Hearing from Citizens (Part I)**

Morton Bertish, 8829 Chisholm Court, asked if the redevelopment area for the old City Hall site includes the “Ponderosa” property and the property owned by 5/3 Bank. Mayor Springer indicated that the redevelopment area does not include these two properties.

**OLD BUSINESS**

**Item #6 – Bill #2816 - An Ordinance Repealing Chapter 240 Section 240.070 Of The City Of Olivette Municipal Code And Enacting A New Chapter In Lieu Thereof Relating To Community Center Rental Fees - Second Reading**

City Clerk Bennett read Bill #2816 - An Ordinance Repealing Chapter 240 Section 240.070 Of The City Of Olivette Municipal Code And Enacting A New Chapter In Lieu Thereof Relating To Community Center Rental Fees for the second time, by title only.

Parks and Recreation Director Tucker-Knight gave an overview of this issue and a PowerPoint presentation summarizing the usage of the Community Center, current rental rates, and proposed rates. Council discussion held regarding event sponsors and how often the rental rates will be reviewed. Ms. Tucker-Knight indicated that the usage and rates will be reviewed annually in conjunction with the budget process.

Council Member Waldman made a motion to approve Bill #2816 - An Ordinance Repealing Chapter 240 Section 240.070 Of The City Of Olivette Municipal Code And Enacting A New Chapter In Lieu Thereof Relating To Community Center Rental Fees. Motion seconded by Council Member Weil.

POLL OF THE COUNCIL:

Council Member Waldman	Yea
Council Member Weil	Yea
Chairman Pro-tem Carl	Yea
Council Member Sewell	Absent
Mayor Springer	Yea

Motion passed. By action of the Olivette City Council, Bill #2816 becomes Ordinance #2590.

**Item #7 – Bill #2818 - An Ordinance to amend the title of Chapter 520 Excavations and Grading and adopt a new chapter title called Chapter 520 Rights of Way Usage and Grading and enact a new Article I titled Rights of Way Usage Code - Second Reading**

City Clerk Bennett read Bill #2818 – An Ordinance to amend the title of Chapter 520 Excavations and Grading and adopt a new chapter title called Chapter 520 Rights of Way Usage and Grading and enact a new Article I titled Rights of Way Usage Code, for the second time, by title only.

Planning and Community Development Director Trejo gave a brief overview of this issue, noting that the version of Bill #2818 that is before the City Council for consideration has been revised by the City Attorney since the first reading. City Attorney Martin stated that there have been two major revisions to the bill since the first reading, along with some minor revisions. He noted that the major revisions included the following: 1) Revision noting that Federal and State deadlines may differ. The revision places the responsibility on the applicant, if they wish the Federal deadlines to apply. 2) Revision noting that Chapter 440 regulations may be applied at the discretion of the Planning and Community Development Director. Council discussion held.

DRAFT

Council Member Carl made a motion to substitute the revised Bill #2818 as presented at tonight's meeting, in place of Bill #2818, as read for the first time at the previous meeting. Motion seconded by Council Member Waldman.

POLL OF THE COUNCIL:

Chairman Pro-tem Carl	Yea
Council Member Waldman	Yea
Council Member Sewell	Absent
Council Member Weil	Yea
Mayor Springer	Yea

Motion passed.

Council Member Weil made a motion to approve Bill #2818 – An Ordinance to amend the title of Chapter 520 Excavations and Grading and adopt a new chapter title called Chapter 520 Rights of Way Usage and Grading and enact a new Article I titled Rights of Way Usage Code, as amended. Motion seconded by Carl.

POLL OF THE COUNCIL:

Council Member Weil	Yea
Chairman Pro-tem Carl	Yea
Council Member Sewell	Absent
Council Member Waldman	Yea
Mayor Springer	Yea

Motion passed. By action of the Olivette City Council, Bill #2818 becomes Ordinance #2591.

**Item #8 – Bill #2819 – An Ordinance of the City of Olivette, Missouri, to Establish a Procedure to Disclose Potential Conflicts of Interest and Substantial Interests for Certain Municipal Officials – Second Reading**

City Clerk Bennett read Bill #2819 – An Ordinance of the City of Olivette, Missouri, to Establish a Procedure to Disclose Potential Conflicts of Interest and Substantial Interests for Certain Municipal Officials, for the second time, by title only.

City Clerk Bennett stated that, as noted at the first reading, every two years, the Missouri Ethics Commission requires that political subdivisions adopt an ordinance to require Financial Interest Statements for Political Subdivisions (short form) to be filed by elected officials and key appointed officials. She noted that the City of Olivette last adopted this type of ordinance in August 2014. The new ordinance, once approved, must be forwarded to the Missouri Ethics Commission, no later than September 15, 2016. Council Member Waldman asked if this ordinance would change any of the current requirements. City Clerk Bennett stated that the requirements would remain the same.

Chairman Pro-tem Carl made a motion to approve Bill #2819 – An Ordinance of the City of Olivette, Missouri, to Establish a Procedure to Disclose Potential Conflicts of Interest and Substantial Interests for Certain Municipal Officials. Motion seconded by Council Member Waldman.

POLL OF THE COUNCIL:

Chairman Pro-tem Carl	Yea
Council Member Waldman	Yea
Council Member Sewell	Absent

DRAFT

Council Member Weil	Yea
Mayor Springer	Yea

Motion passed. By action of the Olivette City Council, Bill #2819 becomes Ordinance #2592.

**NEW BUSINESS**

**Item #9 – Bill #2820 - An Ordinance Repealing Chapter 125, Article VI Olivette on the Go Committee, in its Entirety - First Reading**

City Clerk Bennett read Bill #2820 - An Ordinance Repealing Chapter 125, Article VI Olivette on the Go Committee, in its Entirety for the first time, by title only.

City Manager Sondag stated that, over the past several years, it has become increasingly difficult to recruit and retain the number of volunteers necessary to serve on the Olivette On the Go Committee. She noted that, after much discussion and debate, the Council is being asked to consider an ordinance that would eliminate the committee. She added that the Park and Recreation Commission has been asked to investigate alternative community festivals and/or activities and to bring their recommendations back to the City Council. It is anticipated that the second reading of this bill will be held at the September 13<sup>th</sup> meeting.

**Item #10 - Resolution 2016-18: A Resolution Authorizing the Execution of Change Orders #12 and 13 of the Contract between the City of Olivette and United Construction for Construction of the City Center**

City Manager Sondag stated that the City Council is being asked to approve a resolution authorizing the execution of two change orders in the contract between the City of Olivette and United Construction for construction of the new City Center. She noted that change orders over \$10,000 require City Council approval. City Manager Sondag informed the City Council that Change Order #12, in the amount of \$16,983, includes costs associated with increasing the height of the masonry wall around the generator and increasing the size of the generator pad. Change Order #13, in the amount of \$12,234, includes cost for the import of needed soil material for fill onsite. City Manager Sondag noted that, to date, there have been seventeen change orders totaling \$114,917. This represents 1.3% of the \$8.8M construction costs. Several of the change orders included unit pricing, and thus were anticipated.

Chairman Pro-tem Carl made a motion to approve Resolution 2016-18: A Resolution Authorizing the Execution of Change Orders #12 and 13 of the Contract between the City of Olivette and United Construction for Construction of the City Center. Motion seconded by Council Member Weil.

**POLL OF THE COUNCIL:**

Chairman Pro-tem Carl	Yea
Council Member Weil	Yea
Council Member Sewell	Absent
Council Member Waldman	Yea
Mayor Springer	Yea

Motion passed.

**Item #11 - 2016 Council Rules of Procedure**

City Manager Sondag noted that each year, the City Council reviews its Rules of Procedure, and this year's annual review occurred at the Council Retreat, held on July 23<sup>rd</sup>. She stated that, this year, the Council added a section on Committee/Commission Appointments.

Council Member Weil made a motion to approve the 2016 City Council Rules of Procedure. Motion seconded by Council Member Waldman.

POLL OF THE COUNCIL:

Council Member Weil	Yea
Council Member Waldman	Yea
Council Member Sewell	Absent
Chairman Pro-tem Carl	Yea
Mayor Springer	Yea

Motion passed.

**Item #12 – Consideration of Proposal to Replace Concrete Slabs on Harvest Court and Warson Pines**

Public Works Director McGregor stated that the Public Works Department released a bid package to replace deteriorated concrete pavement on Harvest Ct. and Warson Pines earlier this year, noting that the quantity of concrete that needs to be replaced is more than City staff can perform. He stated that the City received bids from Spencer Contracting and Byrne and Jones, both of whom have had a positive history with Olivette and are qualified to complete the project. He stated that Byrne and Jones is the low bidder and has availability to complete the project this fall. Council Member Waldman asked who owns these streets. Mr. McGregor stated that these are City streets, which were acquired through the Neighborhood Improvement District (NID) process.

Council Member Waldman made a motion to authorize the City Manager to enter into an agreement not to exceed \$64,221.00 with Byrne and Jones, per the bid opening March 9, 2016. Motion seconded by Council Member Weil.

POLL OF THE COUNCIL:

Council Member Waldman	Yea
Council Member Weil	Yea
Council Member Sewell	Absent
Chairman Pro-tem Carl	Yea
Mayor Springer	Yea

Motion passed.

**Item #13 - Consideration of Skid Steer Purchase Proposal**

Public Works Director McGregor stated that the Public Works department currently has 2 backhoes (1989 and 2004 model years) to use for various construction and maintenance projects, and the 1989 backhoe was declared surplus during the August 9, 2016 City Council Meeting. He stated that staff believes that a skid steer will better diversify equipment resources for staff to respond to municipal needs. Mr. McGregor noted that a proposal has been submitted for Council review, extended off of MODOT Contract # 3-130326RW, by Bobcat of St. Louis for a S650 skid steer with enclosed cab and combination bucket. It includes a trade-in of \$9,000.00 for the 1989 backhoe, and feels this is a fair price based on evaluation by Kane Auctioneers. Discussion held.

Council Member Waldman made a motion to authorize the City Manager to approve a purchase order to Bobcat Company, Government Sales in the amount of \$33,362.84 to purchase (1) S650 skid steer with combination bucket. Motion seconded by Chairman Pro-tem Carl.

DRAFT

POLL OF THE COUNCIL:

Council Member Waldman	Yea
Chairman Pro-tem Carl	Yea
Council Member Sewell	Absent
Council Member Weil	Yea
Mayor Springer	Yea

Motion passed.

**Item #14 - Request to Dispose/Donate Outdated Police & Fire Department Electronic Equipment**

Lieutenant Dave Wolf stated that both the Police and Fire Departments have outdated electronic equipment, including walkie-talkies, vehicle radios, vehicle laptops, and vehicle cameras that are no longer in use since the change from analog radios to digital ones. He stated that these items could be disposed of or donated to the Missouri Department of Public Safety (DPS); this agency contacts smaller agencies and rural communities that may be able to utilize the equipment for their operations. Lieutenant Wolf stated that the Police and Fire Departments are asking for authorization to dispose of or donate these items.

Council Member Weil made a motion to authorize the Police and Fire Departments to dispose of or donate outdated electronic equipment. Motion seconded by Chairman Pro-tem Carl.

POLL OF THE COUNCIL:

Council Member Weil	Yea
Chairman Pro-tem Carl	Yea
Council Member Sewell	Absent
Council Member Waldman	Yea
Mayor Springer	Yea

Motion passed.

**Item #15 - Review and Approval of the Minutes of the August 9, 2016 City Council Meeting**

Mayor Springer asked if there were any corrections to be made to the minutes of the August 9, 2016 City Council meeting. Being none, Chairman Pro-tem Carl made a motion to approve the August 9, 2016 City Council meeting minutes as written. Motion seconded by Council Member Waldman.

POLL OF THE COUNCIL:

Council Member Waldman	Yea
Council Member Sewell	Absent
Council Member Weil	Yea
Chairman Pro-tem Carl	Yea
Mayor Springer	Yea

Motion passed.

**Item #16 – Hearing from Citizens (Part 2)**

No speaker cards were submitted.

DRAFT

**Item #17 – City Attorney’s Report**

City Attorney Martin stated that St. Louis County’s brief regarding the Police Standards case, should be filed on either August 26<sup>th</sup> or August 29<sup>th</sup>, and the cities will have 30 days to respond. St. Louis County will have 15 days afterwards to respond back.

City Manager Sondag noted that there will be no City Council meeting on October 11<sup>th</sup>, due to Yom Kippur. She also noted that she will be out of town on September 6<sup>th</sup>, which would be the next Work Session meeting date; therefore, it was decided that September Work Session would be moved to September 20<sup>th</sup>.

**Item #18 – Adjournment**

Being no further business, Council Member Weil made a motion to adjourn the meeting. Motion seconded by Chairman Pro-tem Carl. Mayor Springer adjourned the meeting at approximately 8:40 PM.

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Mayor Ruth Springer

ATTEST:

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Myra G. Bennett, CMC/MPCC  
City Clerk  
City of Olivette



## ***CITY COUNCIL AGENDA SUBMISSION***

### **Agenda Item:**

Hearing from Citizens (Part 2)

### **Description:**

Olivette citizens and businesses express concerns, discuss issues, and make requests of the City Council's assistance in getting matters resolved.

The Mayor and City Council would like to remind the audience of the following:

1. The purpose is to hear your concerns, issues, and questions.
2. Cards submitted after the beginning of 1<sup>st</sup> "Hearing from Citizens" will not be called until the 2<sup>nd</sup> "Hearing from Citizens".
3. The Chair has discretion to allow individuals to speak without previously submitting a card; however, those individuals will also need to complete a card.
4. Personal attacks of Council Member, Staff, and/or individuals are not permissible.
5. Any question should be directed to the Chair and only the Chair.
6. Questions concerning agenda items may be addressed by Council or staff at the time the agenda item is discussed.
7. Questions that are not pertaining to agenda items may receive an answer by the method of your choice; indicated at the bottom of the submittal cards.
8. Profanity is not allowed.
9. Campaigning and electioneering are not permitted.

"Hearing from Citizens" is not intended to be an open discussion. It is intended to provide an opportunity for citizens to be heard at official meetings.

When called, please step to the podium; state your name and your address before addressing your subject matter.

Each person has up to three (3) minutes to speak. Should your time elapse, you are welcome to continue at the second hearing from citizen's session again, for up to 3 minutes.