



PUBLIC NOTICE
City Council Regular Meeting
December 5, 2013, at 7:00 PM
City Hall - 665 Country Club Road

Notice is hereby given that a Regular Meeting of the City Council of the City of Lucas will be held on Thursday, December 5, 2013, at 7 PM at the Lucas City Hall, 665 Country Club Road, Lucas, Texas, at which time the following agenda will be discussed.

Agenda

Call to Order

Call to Order
Roll Call
Determination of Quorum
Reminder to turn off or silence cell phones
Pledge of Allegiance

Citizens' Input

At this time citizens who have pre-registered by filling out a "Request to Speak" sheet and have submitted the sheet to the City Secretary before the call to order will be allowed to speak on any matter other than personnel matters or matters under litigation, for a length of time not to exceed three minutes. No Council action or discussion may take place on a matter until such matter has been placed on a future agenda and posted in accordance with law.

1) Citizens' Input.

Community Interest

2) Items of Community Interest.

Regular Agenda

- 3) Discuss and Consider approval of the minutes from the November 21, 2013 City Council meeting. **[Wingo]**
- 4) Discuss and Consider the approval of **Resolution # R-2013-12-00407** a resolution of the City Council of the City of Lucas, Texas, concerning the election of the Board of Directors of the Central Appraisal District of Collin County; and providing for an effective date.
- 5) Discuss and Consider the approval of a preliminary plat for a 53 ± acre tract of land located on Forest Grove Road and is part of 27 lots, Block 2 of the J. Kerby Survey Abstract No. 506, commonly known as Creekside Estates. **[Hilbourn]**
- 6) Discuss and Consider the approval of an application for membership with Continuum of Care, a supply company that sells EMS equipment, supplies, medications, and narcotics. **[Kitchens]**
- 7) Discuss and Consider the approval of an agreement between the City of Lucas and Emergicon LLC to provide billing, collection services and other support services concerning ambulance services. **[Kitchens]**
- 8) Discuss and Consider the approval of a subscription agreement between the City of Lucas and ESO Solutions, Inc. for software provided by Emergicon LLC. **[Kitchens]**

Executive Session

The City Council may convene in Executive Session in accordance with the Local Government Code. All decisions regarding the discussion of the Executive Session must be made in Open Session.

- 9) The City Council pursuant to Section 551.074 of the Texas Government Code may convene into Executive Session to discuss the hiring and appointment of the City Manager.

Regular Agenda

- 10) Take any action as necessary from the Executive Session.
- 11) Adjournment.

As authorized by Section 551.071 (2) of the Texas Government Code, the City Council may convene into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney regarding any item on the agenda at any time during the meeting.

Approval

Approved by: Mayor Rebecca Mark, November 27, 2013.

Certification

I hereby certify that the above notice of meeting was posted on the bulletin board at Lucas City Hall by 5:00 p.m. on or before Wednesday, November 27, 2013, as required in accordance with Government Code §551.041.

Kathy Wingo, TRMC, MMC
City Secretary

This building is wheelchair accessible. Any requests for sign interpretive services or other special requests for assistance of the hearing impaired must be made 48 hours in advance of the meeting. To make such arrangements, please call 972-727-8999 or email secretary@lucastexas.us.

LUCAS CITY COUNCIL

Meeting Date December 5, 2013

AGENDA ITEM:

- Call to Order

- Roll Call

Present

Absent

Mayor Rebecca Mark

Seat 1 CM Wayne Millsap

Seat 2 CM Jim Olk

Seat 3 CM Steve Duke

Seat 4 CM Philip Lawrence

Seat 5 CM Debbie Fisher

Seat 6 MPT Kathleen Peele

- Determination of Quorum
 - Reminder to silence cell phones
 - Pledge of Allegiance
-

Informational Purposes

Interim City Manager Dan Savage

City Secretary Kathy Wingo

Public Works Director Stanton Foerster

Finance Manager Liz Exum

Fire Chief Jim Kitchens

Development Services Director Joe Hilbourn

City Attorney Joe Gorfida, Jr.

Administrative Assistant Jennifer Faircloth



**City of Lucas
Council Agenda Request**

Council Meeting: December 5, 2013

Requestor: _____

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: _____

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Citizen's Input.

RECOMMENDED ACTION:

SUMMARY:

MOTION:

No action necessary.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____
City Manager: _____ / _____



**City of Lucas
City Council Agenda
Request**

Council Meeting: December 5, 2013

Requestor: _____

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: _____

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Items of Community Interest.

RECOMMENDED ACTION:

SUMMARY:

MOTION:

No action necessary.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____

City Manager: _____ / _____



<h2 style="text-align: center;">City of Lucas Council Agenda Request</h2>

Council Meeting: December 5, 2013

Requestor: Kathy Wingo

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: October 28, 2013

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and Consider approval of the minutes from the November 21, 2013 City Council meeting.

RECOMMENDED ACTION:

Approve as presented.

SUMMARY:

See attached.

MOTION:

I make a Motion to approve minutes from the November 21, 2013 City Council meeting as presented.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____

City Manager: _____ / _____



**City Council Regular Meeting
November 21, 2013, at 7:00 PM
City Hall - 665 Country Club Road
Minutes**

Call to Order

Mayor Rebecca Mark called the meeting to order at 7:00 p.m.

Present/Absent:

Mayor Rebecca Mark	Mayor Pro Tem Kathleen Peele
Councilmember Wayne Millsap	Councilmember Jim Olk
Councilmember Steve Duke	Councilmember Philip Lawrence
Councilmember Debbie Fisher	City Secretary Kathy Wingo
Interim City Manager Dan Savage	Fire Chief Jim Kitchens
Development Services Director Joe Hilbourn	City Attorney Joe Gorfida
Public Works Director Stanton Foerster	

It was determined that a Quorum was present.
Everyone was reminded to turn off or silence cell phones.
Fire Chief Jim Kitchens led everyone in saying the Pledge of Allegiance.

Executive Session

The City Council convened into Executive Session at 7:02 p.m.

- 1) The City Council pursuant to Section 551.074 of the Texas Government Code may convene into Executive Session to deliberate the appointment of individuals to serve on the Planning and Zoning Commission and Board of Adjustments with a term ending October 31, 2015.
- 2) The City Council pursuant to Section 551.074 of the Texas Government Code may convene into Executive Session to discuss the hiring and appointment of the City Manager.

Regular Agenda

The City Council reconvened into Regular Session at 8:12 p.m.

- 3) Take any action as necessary from the Executive Session.

No action was taken as a result of the Executive Session.

Councilmember Wayne Millsap left the meeting at 8:12 p.m.

Citizens' Input

4) Citizens' Input.

Tyler Toth, 13 Bella Vista Circle, Lucas came forward to speak. Mr. Toth attends Collin College and is attending the meeting tonight as a requirement for his government class.

Community Interest

5) Items of Community Interest.

Councilmember Debbie Fisher reminded everyone that NTMWD is cautioning us to conserve water.

Mayor Rebecca Mark participated in the ACO fund raising event today as a celebrity model. There is a board range of services that ACO provides that helps our community.

Public Hearings

- 6) Public Hearing/Discuss and Consider the unilateral annexation of a tract of land situated in the Benjamin Sparks Survey, Abstract NO. 813, in Collin County, Texas, being out of a 70.00 acre tract, as described in Volume 3928, Page 145, in the Deed Records of Collin County, Texas, and being more particularly described as follows: BEGINNING, at a 5/8 inch iron rod found the northwest corner of Lucas UMC, and addition to the City of Lucas, as described in Volume 948, Page 145, in said deed records; THENCE, North 89° 43'48" West, for a distance of 420.19 feet, to a ½ inch iron rod found at the northwest corner of Lucas UMC; THENCE, North 00° 19'07" East, for a distance of 19.00 feet, to a ½ iron rod set; THENCE, North 89° 43'48" West, for a distance of 333.41 feet, to a ½ iron set on a non-tangent curve to the left, having a radius of 665.00 feet, a central angle of 01°18'37", and a tangent of 7.60 feet; THENCE, along said curve to the left for an arc distance of 15.21 feet (Chord Bearing South 02° 05'44" East 15.21 feet), to a ½ inch iron rod set a curve to the right, having a radius of 65.00 feet, a central angle of 97°11'21"; THENCE, along said curve to the right for arc distance of 15.21 feet (Chord Bearing South 40° 16'44" East 15.21 feet), to a ½ inch iron rod set at the point of compound curvature of a curve to the right, having a radius of 735.00 feet, a central angle of 08°31'36", and a tangent of 54.79 feet; THENCE, along said curve to the right for an arc distance of 109.38 feet (Chord Bearing North 04° 03'08" West 109.28 feet), to a ½ inch iron rod set at the point of tangency; THENCE, North 00° 12'40" East, for a distance of 180.90 feet, to a ½ inch iron rod set; THENCE, North 89° 43'48" West, for a distance of 300.00 feet, to a ½ inch iron rod set, in the east line of F.M. 1378

(90 R.O.W.); THENCE, North 00 ° 12'40" East, along the east line of said F.M. 1378, for a distance of 70.00 feet, to ½ inch iron rod set; THENCE, South 89° 43'48" East, departing said east line, for a distance of 300.00 feet, to a ½ inch iron rod set; THENCE, North, 00° 12'40" East, for a distance of 856.23 feet, to a ½ inch iron rod set on a non-tangent curve to the right, having a radius of 60.00 feet, a central angle of 179° 59'07"; THENCE, along said curve to the right for an arc distance of 188.513 feet (Chord Bearing North 35° 54'14" East 120.00 feet), to a ½ inch iron rod set; THENCE, North 00° 11'59" East, for a distance of 188.93 feet, to a ½ inch iron rod set in the south line of Lovejoy Elementary school No. 2, and addition to the city of Lucas, as described in Clerks File NO. 97-0045267, in said Deed Records; THENCE, South 89°11' 30" East, along the eat line of said Lovejoy Elementary, for a distance of 780.50 feet, to a p/k nail found being in the north line of said 70.00 acre tract; THENCE, South 89° 27'06" East, along said north line, for a distance of 315.11 feet. To ½ inch iron rod set at northeast corner of said 70.00 acre tract; THENCE, South 00° 30'35" West, along the east line of said 70.00 acre tract, for a distance of 1247.36 feet, to a ½ inch iron rod set; THENCE, South 00° 03'59" West, along said east line, for a distance of 959.16 feet, to the point of BEGINNING and containing 32.978 acres of land. **[Commonly known as Cimarron Estates. This is the 2nd Public Hearing, the 1st Public Hearing was held on November 7, 2013] [Hilbourn]**

The Public Hearing was opened at 8:18 p.m.

There was no one who wished to speak FOR or AGAINST this item.

The Public Hearing was closed at 8:18 p.m.

Councilmember Debbie Fisher and Mayor Pro Tem Kathleen Peele each stated their opposition to annexing this property due to the drainage issues with this development. Mayor Pro Tem Kathleen Peele stated there is no benefit to the City to annex this development or Edgewood Estates.

Councilmember Philip Lawrence agreed, the homeowners were told when they purchased their properties that they would not be in the City of Lucas.

Councilmember Steve Duke agreed.

Councilmember Jim Olk disagreed. There is a huge advantage having the taxes paid into the General Fund rather than having 1.5 times the water rate into the Water Fund. Also, the City should be made whole by annexing properties that are available.

Mayor Rebecca Mark agreed with Councilmember Jim Olk. Staff was given direction to move forward in bringing this property for Council for consideration.

MOTION: Councilmember Debbie Fisher made a Motion to table this item for a period of not less than one year. Councilmember Philip Lawrence seconded the Motion. Motion carried. Vote: 4-2, Councilmember Olk and Mayor Rebecca Mark voting NAY.

The City Attorney Joe Gorfida stated that if it was intended to kill the annexation with the previous Motion then the Motion should be that Council denies the annexation. The previous Motion allows the item to be brought back within a year.

MOTION: Councilmember Debbie Fisher made a Motion to deny the annexation of Cimarron. Councilmember Philip Lawrence seconded the Motion. Motion carried. Vote: 4-2, Councilmember Jim Olk and Mayor Rebecca Mark voting NAY.

- 7) Public Hearing/Discuss and Consider the unilateral annexation of a tract situated in the Benjamin Sparks Survey, Abstract No. 813, in Collin County, Texas, being a part of a 71.19 acre tract, as described in Volume 549, Page 333, in the Deed Records of Collin County, Texas, and more particular described as follows: Beginning, at ½ inch iron rod set at the northeast corner of Cimarron Phase 1, an addition to the City of Lucas, as described in Volume, Page in the Plat Records of Collin County, Texas: Thence, South 89° 43'22" East, along the north line of said 71.19 acre tract, for a distance of 825.00 feet, to a ½ inch rod set; Thence, South 00° 35'59" West, along the east lines of the 71.19 acre tract, for a distance of 570.020 feet, to a ½ inch iron rod set; Thence, South 89°15'50" East, continuing along said the east line, for a distance of 464.13 feet, to a to a ½ inch iron rod set; Thence, South 00°03'46" West, continuing along said east line, for a distance of 485.39 feet, to a to a ½ inch iron rod set; Thence, South 00°14'24" West, continuing along said east line, for a distance of 527.89 feet, to a to a ½ inch iron rod set; Thence, South 00°09'04" West, continuing along said east line, for a distance of 711.34 feet, to a to a ½ inch iron rod set; Thence, North 89°50'56" West, departing said east line, for a distance of 178.84 feet, to a to a ½ inch iron rod set on a non-tangent curve to the right, for an arc distance of 60.00 feet, a central angle of 134° 50'48" and a tangent of 144.31 feet; Thence, along said curve to the right for an arc distance of 141.21 feet (Chord Bearing South 77°10'07" West – 110.81 feet), to a to a ½ inch iron rod set; Thence, North 89°43'22" West, for a distance of 313.80 feet, to a to a ½ inch iron rod set; Thence, South 00°16'38" West, for a distance of 289.81 feet, to a to a ½ inch iron rod set in the south line of said 71.19 acre tract also being in the north line of F.M. 1378 (90' R.O. W.); Thence, North 89°43'22" West, along said north and south lines, for a distance of 70.00 feet, to a to a ½ inch iron rod set; Thence, North 00°16'38" East, departing said north and south lines, for a distance of 289.81 feet, to a to a ½ inch iron rod set; Thence, North 89°43'22" West, for a distance of 335.35 feet, to a to a ½ inch iron rod set; on a non-tangent curve to the right, having a radius of 60.00 feet, a central angle of 164° 03'21"; Thence, along said curve to the right for an arc distance of 171.80 feet (Chord Bearing North 62°00'34" West – 118.84 feet), to a to a ½ inch iron rod set; Thence, North 89°43'21" West, for a distance of 179.82 feet, a to a ½ inch iron

rod set in the west line of said 71.19 acre tract being in the east line of 2.00 acre tract, as described in Volume 948, Page 428, in the Deed Records of Collin County, Texas; Thence, North 00°03'59" East, along the west line of said 71.19 acre tract and the east line of said 2.0 acre tract, at 62.28 feet passing a 5/8 inch rod found at the northeast corner of said 2.00 acre also being the southeast corner of said Cimarron Phase I, for a total distance of 1021.44 feet, a to a ½ inch iron rod set; Thence, North 00°30'35" East, along said west line and with the east line of said Cimarron Phase I, for a distance of 1247.36 feet, to the POINT OF BEGINNING and containing 62.976 acres of land. **[Commonly known as Edgewood Estates. This is the 2nd Public Hearing, the 1st Public Hearing was held on November 7, 2013] [Hilbourn]**

The Public Hearing was opened at 8:28 p.m.

There was no one present who wished to speak FOR or AGAINST this item.

The Public Hearing was closed at 8:28 p.m.

MOTION: Mayor Pro Tem Kathleen Peele made a Motion to deny the annexation of Edgewood Estates. Councilmember Philip Lawrence seconded the Motion. Motion carried. Vote: 4-2, Councilmember Jim Olk and Mayor Rebecca Mark voting NAY.

- 8) Public Hearing/Discuss and Consider the unilateral annexation of a tract situated in the Montgomery Birch Survey, Abstract NO. 115 and being part of a tract of land described in deed recorded in Volume 1975, Page 744 of the Deed Records of Collin County, Texas and a 83.2327 acre parcel of land out of T. D. James Survey, Abstract NO. 477 and being part of a tract of land described in deed recorded in Volume 480, Page 141 of the Deed of Records of Collin County, Texas and being more particularly described as follows: BEGINNING at the Northeast of said 83.2327 acre tract for the POINT OF BEGINNING; THENCE South 01°47'06" West, a distance of 1559.81 feet to an iron rod found; THENCE South 88°18'53" East, a distance of 1158.69 feet to an iron rod found; THENCE South 02°30'00" East, a distance of 1282.52 feet to an iron rod found; THENCE North 60°35'42" East, a distance of 0.02 feet to an iron rod found; THENCE South 26°03'44" East, a distance of 29.62 feet to an iron rod found; THENCE South 49°46'37" West, a distance of 156.47 feet to an iron rod found; THENCE South 39°22'18" West, a distance of 682.78 feet to an iron rod found; THENCE North 87°39'20" West, a distance of 1535.59 feet to an iron rod found; THENCE North 02°44'57" East, a distance of 805.91 feet to an iron rod found; THENCE North 88°23'52" West, a distance of 568.39 feet to an iron rod found; THENCE North 18°17'35" West, a distance of 651.22 feet to an iron rod found; THENCE North 00° 11'32" East, a distance of 604.85 feet to an iron rod found; THENCE South 88°50'24" East, a distance of 390.20 feet to an iron rod found; THENCE North 01°50'24" East, a distance of 1464.26 feet to an iron rod found; THENCE South 88°31'45" East, a distance of

1203.50 feet to the POINT OF BEGINNING and containing 6,477,178 square feet, 148.6956 acres of land, more or less. **[Commonly known as Lakeview Downs located at the intersection of E. Lucas Road and Snider Lane. This is the 2nd Public Hearing, the 1st Public Hearing was held on November 7, 2013] [Hilbourn]**

The Public Hearing was opened at 8:30 p.m.

David Banowsky, 12801 N. Central Expressway, Suite 1700, Dallas, Texas, representing the property owners, came forward to speak AGAINST this item. It is understood that this annexation is being done under the exempt status. The landowner is interested in working out an agreement that would best fit the development and the City.

The Public Hearing was closed at 8:32 p.m.

As authorized by Section 551.071 (2) of the Texas Government Code, the City Council may convene into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney regarding any item on the agenda at any time during the meeting.

Mayor Rebecca Mark stated that Council would be convening into Executive Session at 8:33 p.m.

The City Council reconvened into Regular Session at 8:53 p.m.

No action was taken as a result of Executive Session.

- 9) Public Hearing/Discuss and Consider the unilateral annexation of a 9.474 ACRE TRACT OF LAND OUT OF THE MONTGOMERY BIRCH SURVEY, ABSTRACT 115, COLLIN COUNTY, TEXAS, BEING THE REMAINDER OF A 39.73 ACRE TRACT OF LAND AS DEEDED TO OWEN GEORGE AND RECORDED IN VOLUME 550, PAGE 165 OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS (DRCCT), AS SHOWN ON THE ATTACHED EXHIBIT "B" AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: The POINT OF BEGINNING is a Corps of Engineers (COE) monument at the southernmost corner of the remainder tract herein described, said point being the westernmost corner of Right of Way as deeded to the State of Texas (TxDOT) and recorded Volume 945, Page 149, DRCCT, and being the northeast corner of tract 4405-1 as deeded to the United States of America (USA) for the Lake Lavon Reservoir and recorded in Volume 738, Page 124, DRCCT; THENCE North 37°42' West, departing said Right of Way line and crossing said Owen George tract with the northeast line of said USA tract, a distance of 909.70 feet to COE monument No. 4405-2, said point being on the north line of said Owen George tract; THENCE South 87°31' East, with the north line of said Owen George tract, a distance of 1237.14 feet to a stake marking the

northeast corner of the Owen George remainder tract, and being the northwest corner of said TxDOT Right of Way tract; THENCE South 51°12' West with the northwest line of the Right of Way for FM 3286, a distance of 168.07 feet to a stake at the beginning of a tangent curve to the left; THENCE with said curving Right of Way having a radius of 2924.79, through a central angle of 10°23', an arc distance of 530.04 feet, and having a chord which bears South 46°00'30" West, a distance of 529.32 feet to a stake at the point of tangent; THENCE South 40°49' West, with said Right of Way line, a distance of 256.88 feet to the POINT OF BEGINNING, and containing 9.474 acres of land. **[Owned by Owen George and is located off E. Lucas Road. This is the 2nd Public Hearing, the 1st Public Hearing was held on November 7, 2013] [Hilbourn]**

The Public Hearing was opened at 8:55 p.m.

There was no one present who wished to speak FOR or AGAINST this item.

The Public Hearing was closed at 8:55 p.m.

Regular Agenda

- 10) Discuss and Consider approval of the minutes from the November 7, 2013 City Council Regular and November 13, 2013 City Council Special meetings. **[Wingo]**

MOTION: Mayor Pro Tem Kathleen Peele made a Motion to approve the minutes from the November 7, 2013 City Council Regular and November 13, 2013 City Council Special meetings. Councilmember Steve Duke seconded the Motion. Motion carried. Vote: 6-0.

- 11) Update on grant application submitted to Wal-Mart by the Friends of the Lucas Fire Department in the amount of \$2,000 to be used for ambulance supplies.

The Friends of the Lucas Fire Department was awarded a \$1,500 grant by the Wal-Mart Foundation.

Mayor Rebecca Mark stated that Wal-Mart has shown many times to be a good citizen to the community.

- 12) Discuss and Consider the approval of an agreement between the City of Lucas and Verizon to allow antennas to be located on the McGarity water tower and authorize the Interim City Manager to execute said agreement. **[Foerster]**

MOTION: Councilmember Jim Olk made a Motion to approve agreement between the City of Lucas and Verizon to allow antennas to be located on the McGarity water tower and authorize the Interim City Manager to execute said agreement. Councilmember Steve Duke seconded the Motion. Motion carried. Vote: 6-0.

- 13) Discuss and Consider the approval of a First Responder Service Agreement between the East Texas Medical Center Emergency Medical Service and Lucas Fire Rescue Department and authorize Fire Chief Jim Kitchens to execute the agreement. **[Kitchens]**

MOTION: Councilmember Philip Lawrence made a Motion to approve the First Responder Service Agreement between the East Texas Medical Center Emergency Medical Service and Lucas Fire Rescue Department and authorize Fire Chief Jim Kitchens to execute the agreement. Councilmember Steve Duke seconded the Motion. Motion carried. Vote: 6-0.

- 14) Discuss and Consider the appointment of a Council Liaison for the Parks & Open Space Board.

Mayor Rebecca Mark said in the interest of time and the lateness of the hour Items 14 – 18 would be lump together and approved with one Motion.

MOTION: Councilmember Debbie Fisher made a Motion that all current Council Liaison appointments would remain the same. Councilmember Philip Lawrence seconded the Motion. Motion carried. Vote: 6-0.

- 15) Discuss and Consider the appointment of a Council Liaison for the Board of Adjustments.

- 16) Discuss and Consider the appointment of a Council Liaison for the Planning & Zoning Commission.

- 17) Discuss and Consider the appointment of a Council Liaison for the North Texas Municipal Water District.

- 18) Discuss and Consider the appointment of a Council Liaison for the North Texas Council of Governments.

- 19) Discuss and Consider the use of city facilities for non-city business meetings and events.

This item removed from the agenda and will be brought back to Council at a later date for consideration.

- 20) Adjournment.

MOTION: Councilmember Jim Olk made a Motion to adjourn the meeting at 9:07 p.m. Councilmember Lawrence seconded the Motion. Motion carried. Vote: 6-0.

These minutes were approved by a majority vote of the City Council on December 5, 2013.

Rebecca Mark, Mayor

ATTEST:

Kathy Wingo, TRMC, MMC
City Secretary



**City of Lucas
Council Agenda Request**

Council Meeting: December 5, 2013

Requestor: _____

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: _____

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and Consider the approval of **Resolution # R-2013-12-00407** of the City Council of the City of Lucas, Texas, concerning the election of the Board of Directors of the Central Appraisal District of Collin County; and providing for an effective date.

RECOMMENDED ACTION:

SUMMARY:

See attached.

MOTION:

I make a Motion to approve **Resolution # R-2013-12-00407** of the City Council of the City of Lucas, Texas, concerning the election of the Board of Directors of the Central Appraisal District of Collin County; and providing for an effective date and to cast the six (6) votes for _____.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____
City Manager: _____ / _____



Collin Central Appraisal District

October 30, 2013

Kathy Wingo, City Secretary
City of Lucas
665 Country Club Rd.
Lucas, TX 75002

Dear Ms. Wingo:

Enclosed you will find the ballot listing the nominees for the Board of Director positions for the Central Appraisal District of Collin County. The candidates are listed alphabetically by their last name.

Each voting unit must vote in open meeting, report its vote by written resolution, and submit it to the chief appraiser before December 15, 2013. Each unit may cast all its votes for one candidate or distribute the votes among any number of the candidates listed. Since there is no provision for write-in candidates, the Chief Appraiser may not count votes for someone not listed on the official ballot.

Sincerely,

A handwritten signature in black ink that reads "Bo Daffin".

Bo Daffin
Chief Appraiser

EID/mlr

Enclosure

REC'D OCT 31 2013



Collin Central Appraisal District

OFFICIAL BALLOT

ISSUED TO: **City of Lucas**

NUMBER OF VOTES: **6**

FOR: BOARD OF DIRECTORS, CENTRAL APPRAISAL DISTRICT OF COLLIN COUNTY.

TIFFANY BURLESON _____ VOTES

RONALD CARLISLE _____ VOTES

DR. LEO FITZGERALD _____ VOTES

WAYNE MAYO _____ VOTES

MICHAEL A. PIREK _____ VOTES

GARY RODENBAUGH _____ VOTES

ROY WILSHIRE _____ VOTES

October 30, 2013

Bo Daffin, Chief Appraiser

Section 6.03 (g) of the State Property Tax Code requires the above action be taken by resolution, therefore, please attach a copy of the resolution to this ballot and return to the Chief Appraiser, at 250 Eldorado Pkwy., McKinney, Texas 75069, before December 15, 2013.

REC'D OCT 31 2013

2014-2015
CENTRAL APPRAISAL DISTRICT
BOARD OF DIRECTOR'S NOMINATIONS

TIFFANY BURLESON	Nominated by the City of Anna. Resides in Anna, TX.
RONALD CARLISLE	Is a current board member and has served since 1/94. Nominated by the City of Frisco, Frisco ISD and McKinney ISD. Resides in Frisco, TX.
DR. LEO FITZGERALD	Is a current board member and has served since the beginning of the Appraisal District, 1/80. Nominated by McKinney ISD and Plano ISD. Resides in Plano, TX.
WAYNE MAYO	Is a current board member and has served since 1/98. Nominated by the City of Richardson, and McKinney ISD. Resides in Richardson, TX.
MICHAEL A. PIREK	Nominated by the City of Plano. Resides in Plano, TX.
GARY RODENBAUGH	Is a current board member and has served since 1/01. Nominated by the City of Allen, Allen ISD, and McKinney ISD. Resides in Allen, TX.
ROY WILSHIRE	Is a current board member and has served since 01/03. Nominated by McKinney ISD. Resides in Plano, TX.

REC'D OCT 31 2013

RESOLUTION # R-2013-12-00407
[CADCC Board Director]

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LUCAS, TEXAS,
CONCERNING THE ELECTION OF THE BOARD OF DIRECTORS OF THE
CENTRAL APPRAISAL DISTRICT OF COLLIN COUNTY; AND PROVIDING
FOR AN EFFECTIVE DATE.**

WHEREAS, the Chief Appraiser of the Central Appraisal District of Collin County is charged with the responsibility of conducting the election process to determine the membership of the Board of Directors of the Collin County Appraisal District; and

WHEREAS, the City of Lucas, Texas is entitled to six (6) votes by an official resolution a candidate for election to the Board of Directors of the Central Appraisal District of Collin County;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUCAS, TEXAS:

SECTION 1. That the City Council of the City of Lucas, Texas does hereby vote for the candidate(s) marked on Exhibit A as a member of the Board of Directors of the Central Appraisal District of Collin County.

SECTION 2. That this resolution shall become effective immediately from and after its passage.

DULY RESOLVED AND ADOPTED by the City Council of the City of Lucas, Texas, on this the 5th day of December, 2013.

City Of Lucas, Texas

Rebecca Mark, Mayor

ATTEST:

Kathy Wingo, TRMC, MMC, City Secretary



City of Lucas Council Agenda Request

Council Meeting: December 5, 2013

Requestor: Joe Hilbourn

Prepared by: Joe Hilbourn

Account Code #: _____

Date Prepared: _____

Budgeted Amount: \$ _____

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and Consider the approval of a preliminary plat for a 53 ± acre tract of land located on Forest Grove Road and is part of 27 lots, Block 2 of the J. Kerby Survey Abstract No. 506, commonly known as Creekside Estates.

RECOMMENDED ACTION:

Approve as presented.

SUMMARY:

Matt Dorsett on behalf of Centurion land acquisitions has applied for preliminary plat approval for a 53 +/- acre tract of land located on Forest Grove road and is part of the J. Kerby Survey Abstract NO. 506. This subdivision consists of 27 lots and has an approved development agreement. This parcel is currently zoned R-1.5, with a maximum of 27 lots.

MOTION:

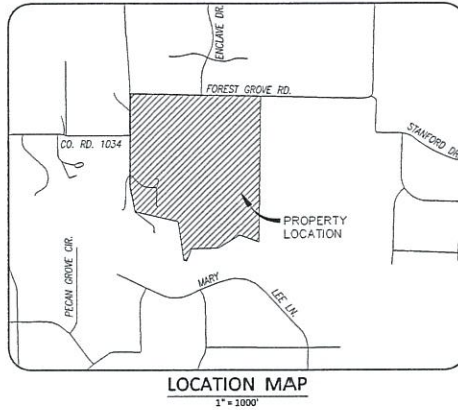
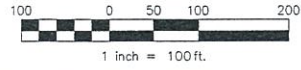
I make a Motion to approve the preliminary plat for a 53 ± acre tract of land located on Forest Grove Road and is part of 27 lots, Block 2 of the J. Kerby Survey Abstract No. 506, commonly known as Creekside Estates.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____

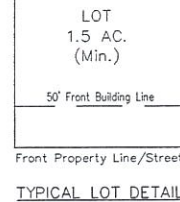
City Manager: _____ / _____



LEGEND
(Not all items may be applicable)

IRF	1/2" IRON ROD WITH PLASTIC CAP STAMPED "SPARSSENG" SET, UNLESS OTHERWISE NOTED
IRRF	IRON ROD FOUND
ICRF	CAPPED IRON ROD FOUND
IRPF	IRON PIPE FOUND
AMF	ALUMINUM MONUMENT FOUND
CM	CONTROL MONUMENT
Esmt.	EASEMENT
UL	UTILITY
DE	DRAINAGE EASEMENT
DUE	DRAINAGE AND UTILITY EASEMENT
UE	UTILITY EASEMENT
WE	WATER EASEMENT
SSE	SANITARY SEWER EASEMENT
SE	SIDEWALK EASEMENT
STE	STREET EASEMENT
FAIE	FIRELANE, ACCESS, & UTILITY EASEMENT
WWE	WASTE WATER EASEMENT
WME	WALL MAINTENANCE EASEMENT
HSE	HIKE & BIKE TRAIL EASEMENT
VAM	VISIBILITY, ACCESS & MAINTENANCE EASEMENT
BY THIS PLAT	
R.O.W.	RIGHT-OF-WAY
Min. FF	MINIMUM FINISH FLOOR ELEVATION
B.L.	BUILDING LINE
◄	STREET NAME CHANGE
CL	CENTERLINE
BD	BLOCK DESIGNATION
ST	STREET FRONTAGE
Cab.	CABINET
Vol.	VOLUME
Pg.	PAGE
No.	NUMBER
FEMA	FEDERAL EMERGENCY MANAGEMENT AGENCY
FIRM	FLOOD INSURANCE RATE MAP
NTS	NOT TO SCALE
Ord. No.	ORDINANCE NUMBER
Inst./Doc.	INSTRUMENT OR DOCUMENT
(DRCT)	DEED RECORDS, COLLIN COUNTY, TEXAS
(PRCCT)	PLAT RECORDS, COLLIN COUNTY, TEXAS
(OPRCT)	OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS
(DRDCT)	DEED RECORDS, DENTON COUNTY, TEXAS
(PRDCT)	PLAT RECORDS, DENTON COUNTY, TEXAS
(OPDCT)	OFFICIAL PUBLIC RECORDS, DENTON COUNTY, TEXAS
(DRDCT)	DEED RECORDS, DALLAS COUNTY, TEXAS
(MRDCT)	MAP RECORDS, DALLAS COUNTY, TEXAS
(OPDCT)	OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS

- NOTES:**
- Preliminary Plat - FOR INSPECTION PURPOSES ONLY.
 - Any bar ditches less than 1% slope must be concrete lined 24" wide, 5" thick with a 15 inch rebar grid.
 - During construction process, a 3rd party inspector must verify trench backfill within the public right of ways.
 - A part of the subject property is located within a FEMA 100-year Floodplain per FEMA Map Panel 48085C0405J with an effective date of June 2, 2009 as shown.



Centerline Curve Table

Curve #	Length	Radius	Tangent	Chord	Chord Bearing	Delta
C1	62.08'	300.00'	31.15'	61.97'	S83°17'28"E	11°51'22"
C2	174.68'	75.00'	174.33'	137.79'	N35°54'57"E	133°26'33"
C3	52.79'	230.00'	26.51'	52.68'	N24°13'47"W	13°09'07"
C4	379.88'	200.00'	279.50'	325.30'	N36°45'36"E	108°49'38"
C5	140.01'	294.12'	71.36'	138.69'	S22°28'16"E	27°16'27"
C6	62.99'	250.00'	31.66'	62.82'	S43°15'00"E	14°26'10"
C7	62.99'	250.00'	31.66'	62.82'	S43°15'00"E	14°26'10"
C8	166.34'	400.00'	84.39'	165.14'	N13°05'12"E	23°49'35"
C9	130.82'	300.00'	66.47'	129.79'	N12°30'26"E	24°59'08"
C10	182.13'	500.00'	92.09'	181.12'	S79°33'01"E	20°52'14"
C11	227.14'	500.00'	115.57'	225.19'	S07°52'14"W	26°01'43"
C12	255.59'	1000.00'	128.49'	254.89'	S02°10'42"W	14°38'39"
C13	76.33'	500.00'	38.24'	76.26'	S05°07'37"W	8°44'49"

Centerline Line Table

Line #	Length	Direction
L1	4.91'	S53°14'24"E

Boundary Line Table

Line #	Length	Direction
BL1	225.96'	N70° 26' 15"W
BL2	150.00'	S20° 49' 45"W
BL3	35.48'	N71° 13' 15"W

Lot Area Table

Parcel #	Block #	Square Feet	Acreage
1	A	81372.93	1.87
2	A	74414.97	1.71
3	A	69532.77	1.60
4	A	65391.34	1.50
5	A	65380.01	1.50
6	A	77660.24	1.78
7	A	71428.49	1.64
8	A	103378.39	2.37
9	A	116288.00	2.67
10	A	100481.61	2.31
11	A	114302.76	2.62
12	A	74043.45	1.70
13	A	67743.63	1.56
14	A	65998.85	1.52
15	A	66062.47	1.52
16	A	73276.45	1.68

Lot Area Table

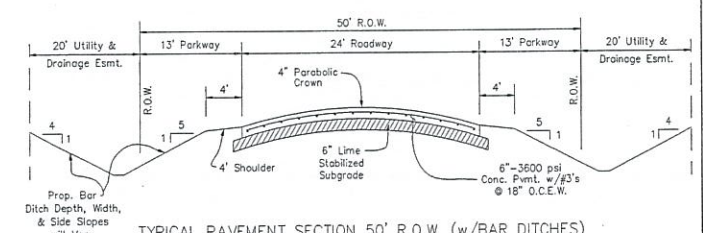
Parcel #	Block #	Square Feet	Acreage
1	B	74820.00	1.72
2	B	65401.75	1.50
3	B	66607.99	1.53
4	B	66722.70	1.53
5	B	74250.10	1.70
6	B	65340.09	1.50
7	B	75310.32	1.73
8	B	66026.43	1.52
9	B	65169.71	1.50
10	B	68363.66	1.57
11	B	75681.39	1.74

Lot Line Table

Line #	Length	Direction
L4	301.02'	N01° 10' 25"E
L5	301.02'	N01° 10' 25"E
L6	266.86'	N00° 00' 52"E
L7	271.63'	N00° 00' 52"E
L8	381.49'	S69° 06' 54"E
L9	385.66'	S69° 06' 54"E
L10	120.87'	S20° 53' 06"W
L11	304.19'	N05° 08' 37"W
L12	145.18'	S09° 30' 02"W
L13	145.18'	S09° 30' 02"W
L14	304.19'	N05° 08' 37"W

Lot Curve Table

Curve #	Length	Radius	Tangent	Chord	Chord Bearing	Delta
C14	12.25'	25.00'	6.25'	12.13'	N14°03'02"E	28°04'21"
C15	61.85'	60.00'	33.99'	59.14'	S35°46'24"E	59°03'28"
C16	12.62'	25.00'	6.45'	12.48'	S75°33'18"W	28°55'07"
C17	12.25'	25.00'	6.25'	12.13'	N55°04'44"W	28°04'21"
C18	68.42'	60.00'	38.47'	64.77'	N25°28'45"E	65°20'01"
C19	12.25'	25.00'	6.25'	12.13'	S06°50'55"W	28°04'21"



PRELIMINARY PLAT
CREEKSIDE ESTATES
LOTS 27, BLOCKS 2
53.173 ACRES OUT OF THE
J. KERBY SURVEY ~ ABSTRACT NO. 506
CITY OF LUCAS, COLLIN COUNTY, TEXAS

OWNER / APPLICANT
Centurion Acquisitions, LP
1221 I-35 E., Suite 200
Carrollton, Texas 75006
Telephone (972) 422-9880
Contact: Steve Lenart

ENGINEER / SURVEYOR
Spiars Engineering, Inc.
765 Custer Road, Suite 100
Plano, TX 75075
Telephone: (972) 422-0077
TBP No. E-2121
Contact: Matt Dorsett

1 OF 2

Metes and Bounds for Forest Grove Property

BEING a tract of land situated in the J. Kerby Survey, Abstract No. 506, City of Lucas, Collin County, Texas, the subject tract being a portion of a tract of land conveyed to Hooper Family Limited Partnership according to the deed recorded in Document No. 20080208000136390 and Document No. 20080208000156400 of the Deed Records, Collin County, Texas (DRCT), and being a portion of a tract of land conveyed to Mack Thomas Etal according to the Deed Recorded in Volume 4620, Page 561 of the Deed Records, Collin County, Texas (DRCT), the subject tract being more particularly described as follows;

BEGINNING at a 1/2" iron rod with plastic cap stamped "SPIARSENG" set for the northwest corner of the subject tract, and being the southwest corner of The Enclave Addition, an addition to the City of Lucas, recorded in Cabinet N, Page 727, Plot Records, Collin County, Texas (PRCCT) and being on the east line of a tract conveyed to HWP Properties, LP, recorded in Document No. 20060327000389570 DRCT, said rod being in Forest Grove Road (a variable width public right-of-way), from said rod an "X" found in concrete bears N 47°00'18" E, 622.02 feet;

THENCE S 88°49'35" E, 1471.45 feet along Forest Grove Road, and along the south line of said Enclave Addition, to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set for the northwest corner of a tract conveyed to Louis Hoefer, recorded in Volume 5635, Page 1245 DRCT, from which an "X" found in concrete found bears S 88°46'59" E, 1245.01 feet, and from which a 5/8" iron rod with plastic cap found bears S 82°24'20" E, 264.25 feet;

THENCE S 00°45'13" W, along the west line thereof, passing at 1585.66 feet a 1/2" iron rod found for witness, continuing a total distance of 1665.38 feet to the southwest corner of said Hoefer tract, and being on the north line of Forest Creek Estates, an addition to the City of Lucas, recorded in Cabinet K, Page 45 PRCCT;

THENCE along the north line of Forest Creek Estates, the following:

N 70°26'15" W, 225.96 feet;

S 58°44'45" W, 285.00 feet;

S 88°44'45" W, 297.00 feet;

S 20°49'45" W, 150.00 feet;

And N 71°13'15" W, 35.48 feet to a point for corner;

THENCE N 08°33'16" W, departing said north line of Forest Creek Estates, passing at 34.02 feet the southeast corner of a tract conveyed to Joseph M. Pettinger and wife, Jennifer L. Pettinger, continuing along the east line thereof a total distance of 443.27 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set for corner;

THENCE N 76°57'25" W, 503.96 feet along the north line thereof to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set for corner, from which a 1/2" capped iron rod found bears N 76°57'25" W, 14.84 feet;

THENCE N 11°16'59" W, 266.82 feet departing said north line to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set for corner;

THENCE N 00°00'52" E, passing at 606.27 feet the southeast corner of said HWP Properties tract, continuing along the east line thereof a total distance of 1089.12 feet to the PLACE OF BEGINNING with the subject tract containing 2,316,224 square feet or 53.173 acres of land.

DEDICATION

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, Centurion Acquisitions, LP is the Owner of the above described project and does hereby adopt this plot designating the herein described property as CREEKSIDE ESTATES, an addition to City of Lucas, Texas and does hereby dedicate to the public use forever the right-of-way, streets, easements, and alleys plotted herein; and does hereby dedicate the utility easements shown on the plot to City of Lucas.

This plot approved subject to all platting ordinances, rules, regulations, and resolutions of the City of Lucas, Texas.

PRELIMINARY, NOT TO BE FILED

Authorized Representative
Centurion Acquisitions, LP

Executed this the ____ day of _____, 2013.

STATE OF TEXAS §
COUNTY OF COLLIN §

Before me, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared _____ Owner(s), known to me to be the person(s) whose names are subscribed to the foregoing instrument and acknowledged to me that they each executed the same for the purpose and considerations therein expressed.

Given under my hand and seal of office, this ____ day of _____, 2013.

PRELIMINARY, NOT TO BE FILED

Notary Public in and for
the State of Texas



SURVEYOR'S CERTIFICATE

That I, Darren K. Brown, of Spiars Engineering, Inc., do hereby certify that I prepared this plot and the field notes made a part thereof from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the Subdivision Regulations of the City of Lucas, Texas.

Dated this the ____ day of _____, 2013.

DARREN K. BROWN, R.P.L.S. NO. 5252

STATE OF TEXAS §
COUNTY OF COLLIN §

BEFORE ME, the undersigned, a Notary Public in and for The State of Texas, on this day personally appeared Darren K. Brown, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2013.

Notary Public, State of Texas

*The Preliminary Plat for CREEKSIDE ESTATES as approved by the City Council for the City of Lucas on _____, 2013 is authorized for use with Engineering Plans for the

construction of public improvements as approved by the City Engineer. A Final Plat shall be approved by the Planning and Zoning Commission upon completion of all public improvements or the provision of an Improvement Agreement under the terms of the Subdivision and Development Ordinance and submission of a Final Plat in compliance with the Subdivision and Development Ordinance of the City of Lucas.

CITY APPROVAL CERTIFICATE

This plot is hereby approved by the Planning and Zoning Commission of the City of Lucas, Texas

Chairman, Planning and Zoning Commission _____ Date _____

ATTEST:

Signature _____ Date _____

Name & Title _____

The Director of Public Work of the City of Lucas, Texas hereby certifies that to the best of his/her knowledge or belief, this subdivision plat conforms to all requirements of the Code of Ordinances and with engineering construction standards and processes adopted by then City of Lucas, Texas as to which his/her approval is required.

Director of Public Works _____ Date _____

The Director of Planning and Community Development of the City of Lucas, Texas hereby certifies that to the best of his/her knowledge or belief, this subdivision plat conforms to all requirements of the Code of Ordinances, or as may have been amended or modified, as allowed, by the Planning and Zoning Commission as to which his/her approval is required

Director of Planning and Community Development _____ Date _____

PRELIMINARY PLAT
CREEKSIDE ESTATES
LOTS 27, BLOCKS 2
53.173 ACRES OUT OF THE
J. KERBY SURVEY ~ ABSTRACT NO. 506
CITY OF LUCAS, COLLIN COUNTY, TEXAS

OWNER / APPLICANT
Centurion Acquisitions, LP
1221 I-35 E., Suite 200
Carrollton, Texas 75006
Telephone (972) 422-9880
Contact: Steve Lenart

ENGINEER / SURVEYOR
Spiars Engineering, Inc.
765 Custer Road, Suite 100
Plano, TX 75075
Telephone: (972) 422-0077
TBPE No. F-2121
Contact: Matt Dorsett



City of Lucas Council Agenda Request

Council Meeting: December 5, 2013

Requestor: Jim Kitchens

Prepared by: Ted Stephens

Account Code #: N/A

Date Prepared: 11/19/2013

Budgeted Amount: \$ ZERO

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and Consider the approval of an application for membership with Continuum of Care, a supply company that sells EMS equipment, supplies, medications, and narcotics.

RECOMMENDED ACTION:

Approval and authorize the Interim City Manager to execute the contract.

SUMMARY:

McKesson is a supply company that sells EMS equipment, supplies, medications, and narcotics. Lucas is not charged a fee nor are we required to purchase solely from McKesson. Recommendation to allow Interim City Manager to execute the contract.

This Contract will allow the Fire Department to purchase EMS supplies, medications, and narcotics at a discounted rate. This contract does not cost the city money nor are we bound only to buy from McKesson. In addition to better prices, McKesson has free next day delivery on all orders over \$100. Their warehouse is in the DFW area.

MOTION:

I make a Motion to approve the application for membership with Continuum of Care, a supply company that sells EMS equipment, supplies, medications, and narcotics.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____

City Manager: _____ / _____

CONTINUUM OF CARE MEMBERSHIP APPLICATION

Prospective Member Information:

Required Information

Prospective Member Facility Name: Lucas Fire Department			Primary Contact Name: Ted Stephens		
Street Address (No P.O. Boxes Please): 165 Country Club Road			Primary Contact Title: Lieutenant		
City: Lucas	State: TX	Zip code (+4 if available): 75002	Primary Contact Phone Number: 972-727-1242		
Member Phone Number: 972-727-1242			Primary Contact Fax Number: 972-727-0091		
Website: www.lucastexas.us			Primary Contact Email: tstephens@lucastexas.us		
Owner/Parent Company: N/A			Prospective Member Operating Classification:		
			<input type="checkbox"/> For Profit	<input type="checkbox"/> Not For Profit	<input checked="" type="checkbox"/> City/County/State
			<input type="checkbox"/> Federal	<input type="checkbox"/> DOD/VA	<input type="checkbox"/> PHS <input type="checkbox"/> Other

Start Date: 12/9/2013 (Start Date may not precede the received date of a signed copy of an application.)

Sponsor Information:

Required Information

Sponsoring Premier Owner/Purchasing Group: N/A		Sponsor Contact Email: N/A	
Sponsor Entity Code: N/A		Direct Parent Name: N/A	Direct Parent Entity Code: N/A
Sponsor Contact Name: N/A		Prospective Member Relation to Direct Parent:	
Sponsor Contact Phone Number: N/A		<input type="checkbox"/> Owned <input type="checkbox"/> Leased <input type="checkbox"/> Managed <input type="checkbox"/> Affiliated <i>* Please See Bottom of Page 2 for definitions of the types of Member Relations</i>	
Sponsor has reviewed the governmental exclusionary lists as required by Premier's policies and Prospective Member does not appear on any such list: <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree			

Member Classification:

Required Information

Member Primary Service (note this does not determine contract tier pricing eligibility): Please choose one					
<input type="checkbox"/> Adult Day Care Center	<input type="checkbox"/> Health Plan/HMO/PPO	<input type="checkbox"/> Physician(s)			
<input type="checkbox"/> Ambulatory Care Center	<input type="checkbox"/> Healthcare Corporate Office	<input type="checkbox"/> Prison/Correctional Health			
<input type="checkbox"/> Assisted Living	<input type="checkbox"/> Healthcare Management Svc Org	<input type="checkbox"/> Public Health Department			
<input type="checkbox"/> Behavioral Health - Inpatient	<input type="checkbox"/> Home Health Care Agency	<input type="checkbox"/> Rehabilitation Center			
<input type="checkbox"/> Behavioral Health - Outpatient	<input type="checkbox"/> Home Infusion	<input type="checkbox"/> Religious Institute			
<input type="checkbox"/> Charity	<input type="checkbox"/> Hospice - Home Care	<input type="checkbox"/> Retail Pharmacy			
<input type="checkbox"/> Closed Door Pharmacy	<input type="checkbox"/> Hospice - Inpatient	<input type="checkbox"/> Skilled Nursing (# of Beds ____)			
<input type="checkbox"/> Community Health Center	<input type="checkbox"/> Imaging Center	<input type="checkbox"/> Student/Employee Health Svc			
<input type="checkbox"/> Cont Care Retire Community (CCRC)	<input type="checkbox"/> Independent Living	<input type="checkbox"/> Substance Abuse Treatment Center			
<input type="checkbox"/> Dentistry	<input type="checkbox"/> Mail Order Pharmacy	<input type="checkbox"/> Surgery Center			
<input type="checkbox"/> Dialysis Center	<input type="checkbox"/> Meals on Wheels	<input type="checkbox"/> Veterinary			
<input type="checkbox"/> DME & Supply Dealer	<input type="checkbox"/> Medical Association	<input type="checkbox"/> Wellness Facility/Fitness Ctr			
<input checked="" type="checkbox"/> First Responder	<input type="checkbox"/> Oncology Center	<input type="checkbox"/> Healthcare-Other:			
<input type="checkbox"/> Freestanding Healthcare Laboratory	<input type="checkbox"/> Pharmacy				

Estimated Annual Supply Spend:

Unique Industry Identifier:

Current/Previous GPO:

Amount: \$ 5,000.00	GLN**: N/A	N/A
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** GLN (Global Location Number) - a 13-digit number used to uniquely identify any legal entity, functional entity, or physical location.

TERMS CONDITIONS AND SIGNATURES

By signing below, Prospective Member agrees and acknowledges that:

- It has read and understands the Premier Group Purchasing Policy ("the Policy") and agrees to comply with the Policy as revised by Premier from time to time.
- It will use Premier Healthcare Alliance, L.P. ("Premier") as its primary group purchasing organization.
- It will use all products and supplies it purchases under Premier's group purchasing agreements solely for its own operations and will not re-sell any such products or supplies (except to the extent Prospective Member is a DME provider or retail pharmacy that is purchasing from Premier suppliers who offer pricing to DME providers and/or retail pharmacies with the expectation that products will be re-sold).
- Prospective Member (and Prospective Member's agents, employees and representatives) shall keep confidential Premier's proprietary and confidential information and shall not disclose such information to any third parties other than Premier's affiliates or Prospective Member's employees with a need to know (who have been made aware of this provision by Prospective Member and agree to comply with it). Such confidential information includes without limitation Premier's plans, reports, proposals, agreements, organizational documents, clinical studies, software, pricing information, and contract catalogs (printed and electronic). Prospective Member's obligation to maintain the confidentiality of such information shall remain in effect continuously throughout the period of Prospective Member's membership in Premier and for a period of five (5) years thereafter.
- It will sign (or in the case of Multi-Facility Systems, will cause each of the facilities listed in Exhibit D to sign and return to Premier) the Facility Authorization and Vendor Fee Agreement attached as Exhibit A. The signed original of the Facility Authorization and Vendor Fee Agreement should be returned to Premier as soon as possible and a copy retained by Prospective Member (and each facility in a Multi Facility System) for its records. Notwithstanding approval of Prospective Member's application to become a member in Premier, Prospective Member (and in the case of Multi-Facility Systems, each facility listed in Exhibit D) will not have the right to participate in Premier's group purchasing programs until the Facility Authorization and Vendor Fee Agreement has been signed and returned to Premier. Execution of the Facility Authorization and Vendor Fee Agreement is required for compliance with the regulatory safe harbor for group purchasing organizations under the Federal Medicare Anti-Fraud and Abuse Statute, codified at 42 C.F.R. § 1001.952(j).
- In the event Prospective Member is subject to applicable open records laws (such as a federal, state or municipal agency) which may require Prospective Member to release confidential or proprietary information of Premier, Prospective Member agrees to promptly notify Premier of any request under such laws for the release of such information. Further, Prospective Member shall cooperate in good faith with Premier and use its best efforts to assist Premier in preventing the release of such information to the extent consistent with applicable law.
- Prospective Member hereby acknowledges that the discounts available under Premier contracts may be exclusive and that its access to, or acceptance of, any incentives or rebates under separate programs may impact the discounts available to it under Premier contracts.
- Prospective Member represents and warrants that it (and its officers, directors and employees) are not listed by a federal or state agency as excluded, debarred, suspended or otherwise ineligible to participate in any federal and/or state programs. Premier may terminate Prospective Member from participation in the Program immediately in the event at any point Prospective Member is not in compliance with this representation and warranty. Termination is in addition to any other rights or remedies Premier may have at law or in equity.
- Prospective Member acknowledges that rebates or discounts it may receive from vendors as part of its participation in the Premier group purchasing program are, for purposes of 42 C.F.R. Section 1001.952(h), "discounts or other reductions in price" and Prospective Member is required to disclose the specified dollar value of any such discounts or reductions in price under any state or federal program which provides cost or charge-based reimbursement to such Prospective Members.
- Prospective Member acknowledges and agrees that by entering into this Agreement the parties have not established, and do not intend to establish, a "business associate" relationship, as such term is defined under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA"). Under no circumstances will Premier request from Member, nor will Member provide to Premier, "protected health information," as such term is defined in HIPAA. For the avoidance of doubt, Prospective Member agrees that Premier is not engaging any supplier as its downstream business associate.

Prospective Member hereby agrees to the foregoing terms of participation and confirms that all information supplied by Prospective Member to Premier is complete and accurate. Participation in Premier group purchasing programs is subject to the Policy. If Prospective Member is a Multi-Facility System, Prospective Member hereby represents that it is authorized to sign this Agreement on behalf of itself and each of the facilities listed in Exhibit D. In such case, Prospective Member and each such facility shall be bound by the terms of this Agreement.

Signature of Prospective Member

Dan Savage

Printed Name of Prospective Member

Interim City Manager

Title

12/6/2013

Date

N/A

Signature of Sponsor

N/A

Printed Name of Sponsor

N/A

Title

Date

Email the completed application and exhibits to rosters@premierinc.com or fax to 704-733-4558.

*Definitions for the types of Member Relations (from page 1):

OWNED: A facility is considered to be owned if the parent (1) holds a direct or indirect equity or corporate Membership interest (which may be less than a majority of the equity or corporate Membership interests) or otherwise has the ability to appoint one or more members of the facility's governing board and (2) the facility is willing to designate Premier Healthcare Alliance, L.P. ("Premier") as its primary GPO.

LEASED: A leased facility is leased and operated by its direct parent.

MANAGED: A facility is considered to be managed if the direct parent directly or indirectly manages all or a portion of its operations pursuant to a management agreement.

AFFILIATED: A facility is considered to be affiliated if the direct parent formally sponsors the facility, but does not own, lease or manage. If an affiliated facility's relationship with its sponsor ends and such facility wishes to continue its participation in the group purchasing programs operated by Premier, such facility should consult with Premier regarding other participation options. In addition, if the affiliate has a sponsoring Premier Owner or purchasing group, the sponsoring Premier Owner or purchasing group must countersign this agreement.

EXHIBIT A – FACILITY AUTHORIZATION & VENDOR FEE AGREEMENT

Prospective Member Information:

Prospective Member Facility Name: Lucas Fire Department
Street Address (No P.O. Boxes Please): 165 Country Club Road
City: Lucas
State: Texas
Zip code (+4 if available): 75002

("Facility") and Premier Healthcare Alliance, L.P. ("Premier") hereby agree as follows:

PURCHASING AGENT FOR PURPOSES OF PARTICIPATING IN GROUP PURCHASING PROGRAMS

Premier is authorized to act as purchasing agent for Facility;

ADMINISTRATIVE FEE

Facility is hereby notified that vendors pay to Premier an administrative fee of three percent (3%) or less of the purchase price of goods and services such vendors provide. In the event there are any exceptions to the foregoing statement, Premier shall provide Facility with an Administrative Fee Exceptions Schedule listing such exceptions.

ANNUAL DISCLOSURE OF ADMINISTRATIVE FEES

On an annual basis, Premier shall provide Facility written notice of the amount of administrative fees which Premier have received from vendors with respect to purchases made by or on behalf of Facility.

Signature of Prospective Member

Dan Savage

Printed Name

12/6/2013

Date

Interim City Manager

Title

ACKNOWLEDGED BY PREMIER HEALTHCARE ALLIANCE, L.P.

By: Premier Services, LLC,

Its: General Partner

Susan D. DeVore

Premier Authorized Signature

Date

Susan DeVore, President and CEO

Printed Name, Title

EXHIBIT B – PHARMACY PROGRAM REQUIREMENTS

Lucas Fire Department

Facility Name

ML3032858

DEA #

HIN #

PLEASE INCLUDE COPY OF DEA CERTIFICATE WHEN SUBMITTING APPLICATION

PHARMACY START DATE*: 12/9/2013

*(*If there is an existing contract with another service provider, the start date may be delayed until after the expiration of the existing contract.)*

Please check one which applies:

- ACUTE NON-RETAIL:** Acute care hospitals (including both acute and sub-acute beds) which use pharmaceuticals for their own operations, excluding operations which compete with retail trade.
 - RETAIL:** Retail pharmacies providing prescription and over the counter drugs as well as other health related items to patients discharged from the hospital and to the general public.
 - NON-ACUTE NON-RETAIL:** Health facilities which have no (or few) acute care beds and use pharmaceuticals for their own operations, excluding operations which compete with retail trade. Such facilities include, but are not limited to ambulatory surgery centers, diagnostic imaging centers, rehabilitation facilities, clinics, home infusion pharmacies, and outpatient hospices.
 - MANAGED CARE PHARMACY:** Staff/Group model managed care pharmacies (HMO) and/or other managed care pharmacies for the "at risk" portion of the business.
 - STATE GOVERNMENT ENTITIES:** 1) Non-federal government entities or agencies providing health benefits (drug) to state employees on a self-insured or self-funded basis. 2) Entities that meet the definition of non-profit as defined by Internal Revenue Service code 501(c)(9) that provide health benefits on a self-insure or self-funded basis via Taft-Hartley Trust Funds and is tax exempt.
 - LONG TERM CARE:** A facility that provides rehabilitative, restorative, and/or ongoing skilled nursing care to patients or residents in need of assistance with activities of daily living. Long-term care facilities include adult day care centers, assisting living facilities, inpatient behavioral health facilities, continuing care retirement communities and inpatient hospice facilities.
- If the Prospective Member participates in the pharmacy program, it will purchase all of its annual requirements for pharmaceuticals which are covered by contract awards made by the Premier Healthcare Alliance, L.P. ("Premier") pharmacy program as measured by annual dollar volume. In cases where Premier has not contracted for certain items required by Prospective Member, Prospective Member is encouraged to contact Premier so that those items may be added to the Premier portfolio of contracted products.
 - Prospective Member designates the below listed wholesaler to be its prime vendor for purchasing pharmaceuticals under the Pharmacy Program. Prospective Member further authorizes the below listed wholesaler to release total purchase data to Premier on a monthly basis.
 - Prospective Member represents that all products and supplies purchased under Premier group purchasing agreements are for Prospective Member's own operations, excluding operations which compete with retail trade. If Prospective Member is a Multi-Facility System, Prospective Member represents that all products and supplies purchased under Premier group purchasing agreements by facilities in Prospective Member's system are for each such facility's own operations, excluding operations which compete with retail trade.

Former Purchasing Group: N/A

Termination Date: N/A

Primary Designated Wholesaler

Secondary Designated Wholesaler

McKesson

Name

Name

4250 Patriot Dr Ste 100

Address

Address

Grapevine TX 76051

City/State/ZIP

City/State/ZIP


Signature of Member's Pharmacy Director or Other Authorized Person

Ted Stephens

Printed Name

EXHIBIT C – CONTACT PROFILE

Please provide contact information in the table below (or in the attached Excel file) for anyone within your facility(s) interested in receiving communications from Premier. If left blank, the default contact will be the Primary Contact listed on Page 1.

Contact 1	Contact 2	Contact 3
Full Name	Full Name	Full Name
Title	Title	Title
Organization Name	Organization Name	Organization Name
Address	Address	Address
City, State, and Zip	City, State, and Zip	City, State, and Zip
Phone	Phone	Phone
Fax	Fax	Fax
Email	Email	Email
Contact 4	Contact 5	Contact 6
Full Name	Full Name	Full Name
Title	Title	Title
Organization Name	Organization Name	Organization Name
Address	Address	Address
City, State, and Zip	City, State, and Zip	City, State, and Zip
Phone	Phone	Phone
Fax	Fax	Fax
Email	Email	Email
Contact 7	Contact 8	Contact 9
Full Name	Full Name	Full Name
Title	Title	Title
Organization Name	Organization Name	Organization Name
Address	Address	Address
City, State, and Zip	City, State, and Zip	City, State, and Zip
Phone	Phone	Phone
Fax	Fax	Fax
Email	Email	Email

EXHIBIT D – LIST OF CHILD SITES

Please use the form attached below to list all child sites that will be receiving products and services through the Program. Participating Member will be asked to respond "Yes" or "No" to the following two questions for each child site listed on the form:

1. **Does the Participating Member have legal authority to sign and bind the child site to contracts, including the terms of this membership application?**
2. **Does the Participating Member have control over all supply chain and purchased services for the child site?**

If the answer to Question 1 is "No" the child site must complete its own, separate membership application. If the answer to Question 2 is "No" a separate Exhibit A (page 3 of this application) must be completed for the child site.



Exhibit D - List of Child Sites.xls

[Handwritten signature in black ink]

[Handwritten signature in blue ink]

Premier Rebate ACH Direct Deposit Enrollment Form

Please complete this form in order to receive Premier Foodservice, Pharmacy and Medical/Surgical rebates through Direct Deposit. Premier offers Direct Deposit so that you may receive your rebates faster, while reducing the potential for fraud.

Date: _____

Facility/Member Information:

Facility Name: _____ Entity Code (if Known): _____

Address: _____

City: _____ St: _____ Zip: _____

Authorized by:

Name: _____ Title: _____

Phone: _____ Email Address: _____

Account Information:

Bank Name: _____

Account Name: _____

ABA Routing Number (for ACH deposits): _____

Account Number: _____

Email Notifications:

Below, please list any email addresses that should receive an email notification when a rebate deposit is made to your account. Multiple email addresses can be provided for each type of rebate.

	Email Addresses:
Foodservice Rebates: <input type="checkbox"/> Check if not applicable	
Pharmacy Rebates: <input type="checkbox"/> Check if not applicable	
Med/Surg Rebates: <input type="checkbox"/> Check if not applicable	

If you have any questions, please call Premier Treasury at: 760-448-5909

This form may be returned to Premier Membership, along with the Membership Application, by email to rosters@premierinc.com or by fax to 704-733-4558. You may also fax the Premier Rebate ACH Direct Deposit Enrollment Form separately, directly to Premier Treasury through the following secure fax line: 704-816-3510.



**City of Lucas
Council Agenda Request**

Council Meeting: December 5, 2013 Requestor: Jim Kitchens
Prepared by: Ted Stephens
Account Code #: _____ Date Prepared: 11/19/2013
Budgeted Amount: \$ 11% of Collected Funds Exhibits: Yes No

AGENDA SUBJECT:

Discuss and Consider the approval of an agreement between the City of Lucas and Emergicon LLC to provide billing, collection services and other support services concerning ambulance services.

RECOMMENDED ACTION:

Approve and authorize Interim City Manager to execute the contract.

SUMMARY:

Emergicon is our proposed EMS Billing Company. Lucas will be charged an 11% fee based on the EMS collections Emergicon collects. Recommendation to allow Interim City Manager to execute the contract.

MOTION:

I make a Motion to approve the agreement between the City of Lucas and Emergicon LLC to provide billing, collection services and other support services concerning ambulance services.

APPROVED BY: _____ Initial/Date
Department Director: JRK /11/19/2013
City Manager: _____ / _____

STATE OF TEXAS §
 § **SERVICE AGREEMENT**
COUNTY OF COLLIN §

This Service Agreement (“Agreement”) is made by and between the City of Lucas, Texas (“Provider”) and Emergicon, LLC, a Texas corporation (“Emergicon”), (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

Recitals

WHEREAS, Emergicon provides billing and collections services, and other support services (the “Services”) to local government agencies, municipalities, fire departments, ambulance providers, and medical emergency services;

WHEREAS, Provider, as part of its overall activities, provides emergency and ambulance services, including emergency medical responses, and other patient encounters and/or patient ambulance transportation (the “Ambulatory Services”); and

WHEREAS, Provider is desirous of obtaining the services of Emergicon.

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

Article I
Term and Termination

1.01 Term. Subject to the terms and conditions set forth herein and except as provided in Section 1.02, the initial term of this Agreement shall be for a period of three (3) years from the date of this Agreement. The Agreement shall continue for additional one-year periods following the Initial Term (such initial term, together with all extensions thereof, shall be referred to herein as the “Term”) If neither Party to this Agreement provides 30-days advance, written notice of termination to the other Party to the end of the Term.

1.02 Termination. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by either Party, without cause and without liability (except for continuing obligations during such period), upon thirty (30) days advance written notice to the other Party.

1.03 Obligations During Notice Period. During the 30-day notice period specified in Sections 1.02, Emergicon shall be entitled to receive compensation for all Accounts (as defined in Section 2.01) billed and collected with respect to the Services and for all other activities performed pursuant to this Agreement, and shall be entitled, after the end of the termination period to receive compensation for all amounts billed during the termination period but not collected until after the end of the termination period. Emergicon shall be continue to provide services as prescribed in the agreement during the 30 day notice period and fully comply with all terms of the Agreement.

1.04 Obligations on Termination. Upon termination of the Agreement, for whatever cause, Emergicon will immediately return all original medical records to Provider and shall provide to Provider a digital copy all records related to Provider. Emergicon shall retain copies of all patient care reports, invoices/claim records, remittance advice documents and all other PHI of Provider's patients (as the term "PHI" is defined in Section 6.01 of this Agreement) for a period of 10 years, as described in Section 5.01 of this Agreement and in compliance with Section 6.01 of this Agreement.

1.05 Mailing of Notices. Any notice required or permitted pursuant to this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by U.S. mail, as certified or registered mail, with postage prepaid, addressed as follows:

If to the Provider:

City of Lucas
665 Country Club Road
Lucas, Texas 75002
Attention: City Manager
Fax: 972-727-0091

With a Copy to:

Joe Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If to Emergicon:

Emergicon, LLC
1717 McKinney Avenue
Suite 700
Dallas, Texas 75201
Attention: Christopher Turner
Fax: 903-887-1863

Each Party shall be entitled to specify a different address by giving five (5) days' written notice to the other Party. All such notices and communications shall be deemed to be received the same day if by fax (provided the sender has a fax machine/fax database generated proof of receipt) and in three (3) business days if by mail.

Article II Billing & Collections

2.01 Billing. During the Term, Emergicon shall be responsible for the billing of charges and fees relating to the Services as directed by and provided by Provider, including, but not limited to, private insurance, Medicare, Medicaid, and other governmental programs relating to:

- (a) patient encounters that occur during the Term; and
- (b) other patient encounters forwarded to Emergicon for billing.

(Note: each set of such charges and fees for the Services related to an individual patient encounter may be referred to herein as an “Account” or, collectively, the “Accounts”).

2.02 Compensation. In consideration for Emergicon providing the Provider with the agreed upon billing services described in this article, the Provider will compensate Emergicon per Addendum A.

2.03 Collection Efforts. If Provider instructs Emergicon to collect on an account(s) initially billed by another Contractor, Emergicon shall be compensated and paid for the collection efforts on said account in accordance with the following schedule: Twenty-Two Percent (22%) of the total amount collected on the account.

If Provider instructs Emergicon to place accounts with a third party collection service, Emergicon shall be compensated and paid for the collection efforts on said account in accordance with the following schedule: Three Percent (3%) of the total amount collected on the account.

All fees shall be payable monthly within thirty (30) days of receipt of invoice.

2.04 Records of Patient Encounters.

(a) Emergicon shall use its reasonable best efforts to bill all Accounts within three (3) business days of such patient encounter. Such records shall be deemed to be the property of Provider, but Emergicon shall have the right to duplicate and retain paper or electronic copies of the records as further described in Section 1.04 and 5.01 of this Agreement. If the records exist only in electronic form, each electronic copy shall be deemed to be an original for the purposes of this Agreement. Provider shall have no obligation to forward original medical records during the 30-day notice period regarding termination as set forth in Paragraph 1.02.

(b) Provider acknowledges that Emergicon has no responsibility for complying with all provisions of Title 42 C.F.R. Section 410.40 which states, in part, that an ambulance service bears the responsibility for obtaining Physician Certification Statements (“PCS’s”). Provider further understands and concurs that Emergicon is neither an ambulance service nor an ambulance provider within the definitions as set forth by the Centers for Medicare and Medicaid Services.

2.05 Requests for Copies. Requests for copies of medical records should be submitted directly to Provider. Provider may authorize release of the records such that the release is in accordance with the standards and time requirements established by State and Federal law, including but not limited to the requirements of Section 773.091 Texas Health and Safety Code, as well as the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology and Clinical Health Act (HITECH Act).

2.06 Activity Reports. Emergicon shall provide to Provider summary and detail monthly reports of all billing activities that occurred during the preceding month as requested by the Provider by the fifth (5th) business day of the month.

2.07 Information Received by Provider. To the extent that Provider receives payments or original copies of documentation directly, Provider shall forward to Emergicon copies of checks, Explanations of Benefits and/or other documentation within ten (10) business days of the date of receipt of payment by Provider.

2.08 Support Services. Emergicon will provide patients and personnel of Provider with telephone support services during normal business hours (Monday - Friday from 9:00 a.m. to 5:00 p.m.) except on public holidays or other holidays as established by Emergicon.

2.09 Obligation for Payment. Payment in accordance with this Article Two shall be due and owing to Emergicon by Provider for all Accounts collected during the Term and collected after the Term but billed during the Term by Emergicon regardless of whether payment was made to Emergicon or to Provider.

Article III Indemnification and Fidelity Bond

3.01 Emergicon's Indemnification.

(a) **EMERGICON AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS PROVIDER, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (TOGETHER, "INDEMNIFIED PERSONS") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH (A) EMERGICON'S PERFORMANCE OF THIS AGREEMENT; (B) THE USE OF THE FACILITIES, OR ANY OTHER PREMISES OR ACCOUNT, IN CONNECTION WITH THIS AGREEMENT BY EMERGICON OR EMERGICON'S OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, MANAGERS, CONTRACTORS, SUBCONTRACTORS, ASSOCIATES, CONCESSIONAIRES, MEMBERS, PATRONS, CUSTOMERS, INVITEES, OR ANY PERSON FOR WHOM EMERGICON IS LIABLE ("EMERGICON PARTIES"),**

OR ANY OF THEM; (C) THE CONDUCT OF EMERGICON'S BUSINESS OR ANYTHING ELSE DONE OR PERMITTED BY EMERGICON TO BE DONE IN OR ABOUT ANY PREMISES WHERE THE WORK OR ANY PORTION THEREOF IS BEING PERFORMED; (D) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF EMERGICON'S OBLIGATIONS UNDER THIS AGREEMENT; (E) ANY MISREPRESENTATION OR BREACH OF WARRANTY BY EMERGICON UNDER THIS AGREEMENT; AND (F) WITHOUT LIMITING ANY OF THE FOREGOING, ANY NEGLIGENT ACT OR OMISSION OF EMERGICON OR ANY OF EMERGICON PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY THE NEGLIGENCE OF ANY OF THE INDEMNIFIED PERSONS.

- (b) WITH RESPECT TO EMERGICON'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (a), EMERGICON SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNIFIED PERSON FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNIFIED PERSON.**
- (c) IF ANY OF THE INDEMNIFIED PERSONS SUFFER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE OF BOTH EMERGICON AND AN INDEMNIFIED PERSON, EMERGICON'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (a) SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO PROVIDER AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- (d) IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST PROVIDER IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, EMERGICON SHALL BE REQUIRED, ON NOTICE FROM PROVIDER, TO DEFEND SUCH ACTION OR PROCEEDINGS AT EMERGICON'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO PROVIDER. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

3.02 Fidelity Bond. Emergicon shall keep and maintain during the term of this Agreement a fidelity bond with a qualified insurer of no less than \$120,000.00.

3.03 Insurance. Emergicon shall keep and maintain during the term of this Agreement Errors & Omissions Liability insurance with a qualified insurer of no less than \$1,000,000.00.

Article IV Confidentiality

4.01 Property of Emergicon. Provider agrees that Emergicon's equipment, computer hardware and software, billing and collection processing, and other related systems and equipment are the property and trade secrets of Emergicon, and that Provider will not release any information regarding such trade secrets to any third party without the prior written consent of Emergicon.

4.02 Fact of Contractual Relationship May Be Disclosed. Notwithstanding the foregoing, either Party may, without the prior written consent of the other Party, disclose the existence of a contractual relationship between the parties.

Article V Audits

5.01 Accurate Books and Records. During the Term and for a period of ten (10) years thereafter, each Party agrees to maintain accurate books and records associated with the billing and collections made the subject of this Agreement.

5.02 Right to Audit. Upon reasonable written notice, either Party may audit the books and records of the other Party insofar and only insofar as such books and records relate or pertain directly to this Agreement. Such audit shall be conducted at the office of the Party being audited, shall be during normal business hours, and shall be at the sole cost and expense of the Party conducting the audit.

5.03 Penalty for Underpayment. If an audit reveals that a Party has failed to pay any amount or portion of any amount due or payable under this Agreement and such amount is in excess of Twenty Thousand Dollars (\$20,000.00), the Party being audited shall pay to the auditing Party the full cost of the audit and the full amount due or payable plus interest at the rate of ten percent (10%) per annum from the date(s) of non-payment.

Article VI Protected Health Information

6.01 HIPAA Compliance. Emergicon shall carry out obligations to protect the privacy and security of protected health information ("PHI") under this Agreement in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended ("HIPAA"), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended

(“the HITECH Act”). In conformity therewith, Emergicon shall use or disclose PHI only if such use or disclosure is in compliance with each applicable requirement of the HIPAA privacy regulations found at 45 CFR § 164.504(e) and shall comply with the HIPAA security regulations made directly applicable to business associates under the HITECH Act. Emergicon will protect the privacy and security of any personally identifiable PHI that is collected, processed or learned as a result of the services provided to the Provider and Emergicon agrees that it will:

- a) Not use or further disclose PHI except as permitted under this Agreement or required by law;
- b) Use appropriate safeguards to prevent use or disclosure of PHI except as permitted by this Agreement.
- c) Mitigate, to the extent practicable, any harmful effect that is known to Emergicon of a use or disclosure of PHI by Emergicon in violation of this Agreement;
- d) Report to Provider any use or disclosure of PHI not provided for by this Agreement of which Emergicon becomes aware;
- e) Ensure that agents or subcontractors to whom Emergicon provides PHI, or who have access to PHI created or received by Emergicon on behalf of the Provider, agree to the same restrictions and conditions that apply to Emergicon with respect to such PHI;
- f) Make PHI available to Provider and to the individual who has a right of access as required under HIPAA within ten (10) days of the request by Provider on behalf of the individual. To the extent PHI is maintained in an electronic health record, Emergicon shall provide the individual with a copy of such information in electronic format, as required by the HITECH Act;
- g) Incorporate any amendments to PHI when notified to do so by Provider;
- h) Provide an accounting of all uses or disclosures of PHI made by Emergicon as required under the HIPAA privacy rule and the HITECH Act within sixty (60) days; and
- i) Make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Emergicon on behalf of the Provider available to the Secretary of the Department of Health and Human Services for purposes of determining Emergicon’s and Provider’s compliance with HIPAA and the HITECH Act.
- j) At the termination of this Agreement, return or destroy all PHI received from, or created or received by Emergicon, and if return is infeasible, the protections of this Section will extend to such PHI;

- k) Restrict the disclosure of PHI to a health plan for purposes of carrying out payment or healthcare operations if the Provider authorizes or requests Business Associate to do so;
- l) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of the Provider;
- m) Implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other requirements of the HIPAA Security Rule;
- n) Report to Covered Entity any security incident (as defined by the HIPAA Security Rule) of which Emergicon becomes aware, and the steps it has taken to mitigate any potential security compromise that may have occurred, and provide a report to the Provider of any loss of data or other information system compromise as a result of the incident;
- o) Notify the Provider of a breach of unsecured PHI following Emergicon's discovery of a breach without unreasonable delay and in no case later than 60 calendar days after discovery, and provide to the Provider: (a) the identification of each individual whose unsecured PHI has been, or is reasonably believed by Emergicon to have been, accessed, acquired, used, or disclosed during the breach; and (b) any other available information that Emergicon is required to include in notification to affected individuals;
- p) Secure all PHI in accordance with the technologies and methodologies specified by guidance from the Secretary of HHS, issued pursuant to the HITECH Act; and
- q) Assist the Provider in complying with its Red Flag Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. § 681.2); (b) taking all steps necessary to comply with the policies and procedures of the Provider's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of the Provider agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting the Provider of any red flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to the Provider of any threat of identity theft as a result of the incident.

6.02 HIPAA Disclosures. The specific uses and disclosures of PHI that may be made by Emergicon on behalf of Provider include:

- a) The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by Provider to its patients;

- b) Preparation of reminder notices and documents pertaining to collections of overdue Accounts;
- c) The submission of supporting documentation to carriers, insurers and other payers to substantiate the health care services provided by Provider to its patients or to appeal denials of payments for same;
- d) The preparation and release of medical records to patients or their legal representatives as permitted by HIPAA privacy and security rules and the HITECH Act;
- e) Uses required for the proper management of Emergicon as a business associate; and
- f) Other uses or disclosures of PHI as permitted by HIPAA privacy and security rules.

6.03 HIPAA Breach Provisions. Notwithstanding any other provisions of this Agreement, if either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of the other Party's obligations under this Agreement, that Party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, either terminate the Agreement (if feasible), or if termination is infeasible, report the problem to the Secretary of the Department of Health and Human Services.

Article VII Miscellaneous

7.01 No Waiver. The failure of either Party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature.

7.02 Provisions Construed Separately. The parties agree that each provision of this Agreement shall be construed as separable and divisible from every other provision and that the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision hereof. In the event that a court of competent jurisdiction determines that any term or provision herein shall be invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, and shall be interpreted as if the invalid term or provision were not a part hereof.

7.03 Final Agreement. This Agreement sets forth the entire, final and complete understanding between the parties hereto relevant to the subject matter of this Agreement. No waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed on behalf of both parties.

7.04 Performance of Agreement, Venue; Choice of Law. Provider understands and agrees that Emergicon will be performing this contract in Dallas County, Texas. The venue for any disputes or causes of action that may arise out of this Agreement is the state and county

courts located in Dallas County, Texas. The provisions of this Agreement shall be determined in accordance with the laws of the State of Texas excluding the choice of law provisions thereof.

7.05 Headings. The headings of this Agreement are for ease of reference only and are not intended to limit or restrict the terms hereof.

7.06 Binding Nature of Agreement. This Agreement is binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

7.07 Compliance with Laws Generally. Emergicon shall comply with all applicable laws, orders, rules, or regulations of all governmental agencies bearing on its performance hereunder. If so requested by Provider, Emergicon shall submit appropriate evidence of such compliance.

7.08 Independent Contractor. It is understood and agreed that Emergicon is an independent contractor. Nothing herein contained shall be construed to create any partnership, joint venture, or joint enterprise between the parties.

7.09 Non-Profit Status Determination Letter. If Provider is a not-for-profit entity, Provider shall provide a duplicate of its letter determining its not-for-profit status with the Internal Revenue Service. In providing such letter, Provider further represents and warrants to Emergicon that it has done every act necessary to maintain its not-for-profit status with the Internal Revenue Service and is not aware of any pending, threatened or actual revocation of its not-for-profit status.

7.10 Appendices. Emergicon and Provider may enter into various appendices to this Agreement from time to time and at any time regarding additional services. Such appendices shall be considered part of this Agreement as if set forth herein at length unless such appendix provides otherwise.

7.11 Assignment. Neither Party shall assign or otherwise transfer this Agreement, any interest in this Agreement, or any right or obligation hereunder to any other Party without the written consent of the other Party.

7.12 Attorneys' Fees. Should it become necessary for either Party to employ an attorney to enforce any of the terms and conditions hereof, including the collection of fees, either Party shall do so at their sole cost and expense.

(signature page to follow)

EXECUTED this 5th day of December, 2013.

City of Lucas, Texas

By: _____
Dan Savage, Interim City Manager

Approved as to form:

By: _____
Joe Gorfida, Jr., City Attorney
(JIG/11-19-13/63632)

EXECUTED this _____ day of _____, 2013.

Emergicon, LLC

By: _____
Name: _____
Title: _____

ADDENDUM A

This document is an addendum to the Service Agreement between Emergicon, L.L.C. and the Lucas Fire~Rescue. It is understood that the following software is being purchased from ESO Solutions by Lucas Fire~Rescue through a Service Agreement with Emergicon, L.L.C.

QUOTE LINE ITEMS					
Product	Quantity	List Price	Discounts	Total Price	Line Item Description
ePCR Suite w/Quality Management < 600 Incidents	1.00	\$2,795.00	\$279.50	\$2,515.50	Annual Recurring Cost
ePCR Mobile	1.00	\$695.00	\$69.50	\$625.50	One-Time Cost
Interface - Monitor	1.00	\$3,995.00	\$399.50	\$3,595.50	One-Time Cost
Interface - Billing	1.00	\$3,995.00	\$3,995.00	\$0.00	One-Time Cost
Services - Training	1.00	\$995.00	\$0.00	\$995.00	One-Time Cost
Services - Training Travel Costs	1.00	\$750.00	\$0.00	\$750.00	One-Time Cost

Full Price	\$13,225.00
Sum of Discounts	\$4,743.50
Grand Total	\$8,481.50

Emergicon agrees to pay the above mentioned software fees to ESO Solutions.

The contract between ESO Solutions and Lucas Fire~Rescue will automatically renew annually according to the ESO Solutions Software License Agreement.

Cancellation fees

Should Lucas Fire~Rescue terminate Emergicon's Service Agreement or ESO's Subscription Agreement within twelve (12) months of the date of this Addendum, Lucas Fire~Rescue will be responsible for full payment to Emergicon of a cancellation fee equal to the total cost (\$10,387.00). Emergicon will invoice Lucas Fire~Rescue upon written notice of cancellation and payment will be due 30 days from cancellation date.

Compensation

In consideration for providing the agreed upon billing services in the Service Agreement and ESO Pro Suite detailed above, Lucas Fire~Rescue will amend Section 2.02 of the Service Agreement to pay Emergicon eleven percent (11%) of the total amount collected on the Account.

Emergicon, L.L.C.

By: _____
Name: Christopher Turner
Title: President & CEO

Date: _____

City of Lucas

By: _____
Name: Dan Savage
Title: Interim City Manager

Date: December 5, 2013



**City of Lucas
Council Agenda Request**

Council Meeting: December 5, 2013

Requestor: Jim Kitchens

Prepared by: Ted Stephens

Account Code #: _____

Date Prepared: 11/19/2013

Budgeted Amount: \$ _____

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and Consider the approval of a subscription agreement between the City of Lucas and ESO Solutions, Inc. for software provided by Emergicon LLC.

RECOMMENDED ACTION:

Approve and authorize Interim City Manager to execute the agreement.

SUMMARY:

ESO Contract: The ESO Company is the company that will provide the software for our patient report form. The ESO software will communicate directly with the hospital and with Emergicon, who will be our billing agent.

ESO will be the software we use for patient reporting to the hospitals and to Emergicon. Our recommendation is to authorize the Interim City Manager to execute the contract.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____

City Manager: _____ / _____

SUBSCRIPTION AGREEMENT

This Subscription Agreement (the “Agreement”) is made as of the first date written below (the “Effective Date”) by and between ESO SOLUTIONS, INC., a Texas corporation with its principal place of business at 9020 N Capital of Texas Hwy, Building II-300, Austin, Texas 78759 (“ESO”), and City of Lucas, with its principal place of business at 165 Country Club Road, Lucas, Texas, 75002 (“Customer”).

RECITALS:

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 hereof. Customer agrees that Services purchased hereunder are neither contingent on the delivery of any future functionality or features, nor dependent on any oral or written public comments made by ESO regarding future functionality or features.
2. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate one year after the Effective Date. 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 Emergicon with its principal place of business at PO Box 180446, Dallas, Texas 75218 (“Billing Agent”) pay all or a portion of the ESO Subscription and/or One-time Fees on its behalf as indicated in Exhibit A. In the event that Billing Agent does not pay the Subscription and/or One-time Fees on behalf of Customer, and Customer chooses to continue receiving ESO Services, then Customer shall be responsible for any outstanding fees. The Subscription Fees are invoiced annually in advance. ESO may evaluate Customer’s usage and adjust Customer’s invoice based on changes in Customer usage as indicated in Exhibit A.
 - 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 Cause.** 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 fifteen (15) 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 4a above, ESO shall deliver to Customer its data, in machine readable format, on DVD or CD, at Customer’s option. Customer shall reimburse ESO for the cost of the media on which Customer’s data is delivered to Customer. If Customer wants the data to be delivered in a medium other than DVD or CD, ESO shall make reasonable and good faith efforts to accommodate Customer, provided that Customer supplies the medium on which the data is to be provided and shall pay for any additional cost incurred by ESO in accommodating this request.

Customer shall have full access to its medical records containing PHI, when and if it leaves ESO, no matter the reason for termination of this Agreement. ESO agrees to provide an annual backup of Customer’s medical records, including Customer’s PHI.

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 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.

9. **Support and Updates.** During the term of this Agreement, ESO shall provide to Customer the support services and will meet the service levels as set forth in Exhibit B attached hereto and incorporated hereof. 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, customization, 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. **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.

12. **Indemnification by Customer.** To the extent allowed by law, Customer will defend and indemnify ESO from any and all claims brought against ESO by third parties 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.

13. **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, PROCEDURE OR INFORMATION NOT CONTROLLED BY ESO, THROUGH ACCIDENT OR FRAUDULENT MEANS OR DEVICES.

14. **Acknowledgements and Disclaimer of Warranties.** Customer acknowledges that ESO cannot guarantee that there will never be any outages in ESO's network and that no credits shall be given in the event Customer's access to ESO's network is interrupted. UNLESS OTHERWISE SPECIFIED HEREIN, ESO MAKES NO 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), ALL OF WHICH WARRANTIES BY ESO ARE HEREBY EXCLUDED AND DISCLAIMED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

15. 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 and 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.

16. 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 exhibits, addenda and any Business Associate Agreement (as that term is used in the Health Insurance Portability and Accountability Act and related regulations) hereto, 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. 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 or provider for Customer.
- e. Aggregate Data Reporting. Customer hereby grants ESO the right to collect 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.

- f. 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.
- g. Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.
- h. 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.
- i. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given as of the date of delivery or confirmed facsimile or email transmission. Notices must be delivered or sent to the parties' respective addresses set forth above.
- j. Taxes. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first written below.

ESO SOLUTIONS, INC.

CUSTOMER

By: _____

By: _____

Name: Chris Dillie

Name: _____

Title: President/CEO

Title: _____

Date: _____

Date: _____

Telephone: 866.766.9471 x 1022

Telephone: _____

Email: chris.dillie@esosolutions.com

Email: _____

EXHIBIT A
SOFTWARE FEE SCHEDULE

Customer hereby selected the following ESO Services, at the fees indicated:

Emergicon will provide the following products:

- ESO ePCR Annual Subscription (1)
- ESO Pro Mobile Application (1)
- Cardiac Monitor Interface (1)
- Billing Interface (1)
- Onsite Training (1)
- Training Travel Expense (1)

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 8:00 am to 5:00 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 ASSOCIATES AGREEMENT

This Agreement (this "Agreement") is made and entered into as of the contract execution date by and between **ESO Solutions Inc.**, ("Business Associate") a State of Texas corporation, and **City of Lucas** ("Covered Entity").

WHEREAS, Business Associate acknowledges that Covered Entity has in its possession data that contains individual identifiable health information as defined by Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA") and the regulations promulgated thereunder; and

WHEREAS, Business Associate and Covered Entity are parties to an agreement (the "Service Agreement"), pursuant to which the fulfillment of the Parties' obligations thereunder necessitates the exchange of, or access to, data including individual identifiable health information,

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

ARTICLE 1
DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the meanings set forth below.

- 1.1 "HHS Transaction Standard Regulation" means the Code of Federal Regulations ("CFR") at Title 45, Sections 160 and 162.
- 1.2 "Individual" means the subject of PHI or, if deceased, his or her personal representative.
- 1.3 "Parties" shall mean the Covered Entity and Business Associate. (Covered Entity and Business Associate, individually, may be referred to as a "Party.")
- 1.4 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.5 "PHI" shall have the same meaning as the term "protected health information in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.
- 1.6 "Required By Law" shall have the same meaning as "required by law" in 45 CFR §164.501.
- 1.7 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

ARTICLE 2
CONFIDENTIALITY

- 2.1 Obligations and Activities of Business Associate. Business Associate agrees as follows:
 - (a) not to use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law;
 - (b) to establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted herein;
 - (c) to report to Covered Entity any use, access or disclosure of the PHI not provided for by this Agreement, or any misuse of the PHI, including but not limited to systems compromises of which it

becomes aware, and to mitigate, to the extent practicable, any harmful effect that is known to Business Associate as a result thereof;

- (d) to enforce and maintain appropriate policies, procedures, and access control mechanisms to ensure that any agent, including a subcontractor, to whom it provides PHI 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. The access and privileges granted to any such agent shall be the minimum necessary to perform the assigned functions;
- (e) to provide access, at the request of Covered Entity, and in the time and manner reasonable designated by Covered Entity, to PHI in a Designated Record Set (as defined in the Privacy Rule), to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524;
- (f) to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity;
- (g) to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner reasonably requested by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule;
- (h) to document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- (i) to provide to Covered Entity or an Individual, in a time and manner reasonably requested by Covered Entity, information collected in accordance with Section 2.1(i) above to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- (j) to promptly notify Covered Entity of all actual or suspected instances of deliberate unauthorized attempts (both successful and unsuccessful) to access PHI;
- (k) to maintain and enforce policies, procedures and processes to protect physical access to hardware, software and/or media containing PHI (e.g., hardcopy, tapes, removable media, etc.) against unauthorized physical access during use, storage, transportation, disposition and /or destruction;
- (l) to ensure that access controls in place to protect PHI and processing resources from unauthorized access are controlled by two-factor identification and authentication: a user ID and a Token, Password or Biometrics.

2.2 Disclosures Required By Law.

In the event that Business Associate is required by law to disclose PHI, Business Associate will immediately provide Covered Entity with written notice and provide Covered Entity an opportunity to oppose any request for such PHI or to take whatever action Covered Entity deems appropriate.

2.3 Specific Use and Disclosure Provisions.

- (a) Except as otherwise limited in this Agreement, Business Associate may use PHI only to carry out the legal responsibilities of the Business Associate under the Service Agreement.
- (b) Except as otherwise limited in this Agreement, Business Associate may only disclose PHI (i) as Required By Law, or (ii) in the fulfillment of its obligations under the Service Agreement and provided that Business Associate has first obtained (A) the consent of Covered Entity for such disclosure, (B) reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (C) reasonable assurances from the person to

whom the information is disclosed that such person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 Obligations of Covered Entity.

- (a) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosures of PHI.
- (c) Covered Entity shall notify Business Associate of 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 Business Associate's use or disclosure of PHI.
- (d) For any PHI received by Covered Entity from Business Associate on behalf of a third party or another covered entity, Covered Entity agrees to be bound to the obligations and activities of Business Associate enumerated in Section 2.1 as if, and to the same extent, Covered Entity was the named Business Associate hereunder.

2.5 Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

2.6 Policy and Procedure Review.

Upon request, Business Associate shall make available to Covered Entity any and all documentation relevant to the safeguarding of PHI including but not limited to current policies and procedures, operational manuals and/or instructions, and/or employment and/or third party agreements.

ARTICLE 3 SECURITY

3.1 Government Healthcare Program Representations.

Business Associate hereby represents and warrants to Covered Entity, its shareholders, members, directors, officers, agents, or employees that Business Associate has not been excluded or has not been served a notice of exclusion or has not been served with a notice of proposed exclusion, or has not committed any acts which are cause for exclusion from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including, but not limited to, Medicare or Medicaid, and has not been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription, or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Business Associate further agrees to notify

Covered Entity immediately after Business Associate becomes aware that the foregoing representation and warranty may be inaccurate or may be incorrect.

3.2 Security Procedures.

Each Party shall employ security procedures that comply with HIPAA and all other applicable state and federal laws and regulations (collectively, the "Law") and that are commercially reasonable, to ensure that transactions, notices, and other information that are electronically created, communicated, processed, stored, retained or retrieved are authentic, accurate, reliable, complete and confidential. Moreover, each Party shall, and shall require any agent or subcontractor involved in the electronic exchange of data to:

- (a) require its agents and subcontractors to provide security for all data that is electronically exchanged between Covered Entity and Business Associate;
- (b) provide, utilize, and maintain equipment, software, services and testing necessary to assure the secure and reliable transmission and receipt of data containing PHI;
- (c) maintain and enforce security management policies and procedures and utilize mechanisms and processes to prevent, detect, record, analyze, contain and resolve unauthorized access attempts to PHI or processing resources;
- (d) maintain and enforce policies and guidelines for workstation use that delineate appropriate use of workstations to maximize the security of data containing PHI;
- (e) maintain and enforce policies, procedures and a formal program for periodically reviewing its processing infrastructure for potential security vulnerabilities;
- (f) implement and maintain, and require its agents and subcontractors to implement and maintain, appropriate and effective administrative, technical and physical safeguards to protect the security, integrity and confidentiality of data electronically exchanged between Business Associate and Covered Entity, including access to data as provided herein. Each Party and its agents and subcontractors shall keep all security measures current and shall document its security measures implemented in written policies, procedures or guidelines, which it will provide to the other Party upon the other Party's request.

ARTICLE 4 EXCHANGE OF STANDARD TRANSMISSIONS

4.1 Obligations of the Parties. Each of the Parties agrees that for the PHI,

- (a) it will not change any definition, data condition or use of a data element or segment as proscribed in the HHS Transaction Standard Regulation.
- (b) it will not add any data elements or segments to the maximum denied data set as proscribed in the HHS Transaction Standard Regulation.
- (c) it will not use any code or data elements that are either marked "not used" in the HHS Standard's implementation specifications or are not in the HHS Transaction Standard's implementation specifications.
- (d) it will not change the meaning or intent of any of the HHS Transaction Standard's implementation specifications.

4.2 Incorporation of Modifications to HHS Transaction Standards.

Each of the Parties agrees and understands that from time-to-time, HHS may modify and set compliance dates for the HHS Transaction Standards. Each of the Parties agrees to incorporate by reference into this Agreement any such modifications or changes.

4.3 Business Associate Obligations.

- (a) Business Associate shall not submit duplicate transmissions unless so requested by Covered Entity.
- (b) Business Associate shall only perform those transactions that are authorized by Covered Entity. Furthermore, Business Associate assumes all liability for any damage, whether direct or indirect, to the electronic data or to Covered Entity's systems caused by Business Associate's unauthorized use of such transactions.
- (c) Business Associate shall hold Covered Entity harmless from any claim, loss or damage of any kind, whether direct or indirect, whether to person or property, arising out of or related to (1) Business Associate's use or unauthorized disclosure of the electronic data; or (2) Business Associate's submission of data, including but not limited to the submission of incorrect, misleading, incomplete or fraudulent data.
- (d) Business Associate agrees to maintain adequate back-up files to recreate transmissions in the event that such recreations become necessary. Back-up tapes shall be subject to this Agreement to the same extent as original data.
- (e) Business Associate agrees to trace lost or indecipherable transmissions and make reasonable efforts to locate and translate the same. Business Associate shall bear all costs associated with the recreation of incomplete, lost or indecipherable transmissions if such loss is the result of an act or omission of Business Associate.
- (f) Business Associate shall maintain, for seven (7) years, true copies of any source documents from which it produces electronic data.
- (g) Except encounter data furnished by Business Associate to Covered Entity, Business Associate shall not (other than to correct errors) modify any data to which it is granted access under this Agreement or derive new data from such existing data. Any modification of data is to be recorded, and a record of such modification is to be retained by Business Associate for a period of seven (7) years.
- (h) Business Associate shall not disclose security access codes to any third party in any manner without the express written consent of Covered Entity. Business Associate furthermore acknowledges that Covered Entity may change such codes at any time without notice. Business Associate shall assume responsibility for any damages arising from its disclosure of the security access codes or its failure to prevent any third party use of the system without the express written consent of Covered Entity.
- (i) Business Associate shall maintain general liability coverage, including coverage for general commercial liability, for a limit of not less than one million dollars, as well as other coverage as Covered Entity may require, to compensate any parties damaged by Business Associate's negligence. Business Associate shall provide evidence of such coverage in the form of a certificate of insurance and agrees to notify Covered Entity and/or HOI immediately of any reduction or cancellation of such coverage.
- (j) Business Associate agrees to conduct testing with Covered Entity to ensure delivery of files that are HIPAA-AS Compliant and to accommodate Covered Entity's specific business requirements.

4.4 Confidential and Proprietary Information

(a) Proprietary Information

Business Associate acknowledges that it will have access to certain proprietary information used in Covered Entity's business. Covered Entity's proprietary information derives its commercial value from the fact that it is not available to competitors or any third parties, and the disclosure of this information would or could impair Covered Entity's competitive position or otherwise prejudice its ongoing business. Business Associate agrees to treat as confidential, and shall not use for its own commercial purpose or any other purpose, Covered Entity's proprietary information. Business Associate shall safeguard Covered Entity's proprietary information against disclosure except as may be expressly permitted herein. Such proprietary information includes, but is not limited to, confidential information concerning the business operations or practices of Covered Entity, including specific technology processes or capabilities.

ARTICLE 5 MISCELLANEOUS

5.1 Indemnification.

Each Party agrees to indemnify the other for any damages, costs, expenses or liabilities, including legal fees and costs, arising from or related to a breach of such Party's obligations hereunder.

5.2 Term and Termination.

- (a) Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the PHI 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 it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) Termination for Cause. Upon a material breach by Business Associate of its obligation hereunder, Covered Entity may (i) terminate this Agreement and the Service Agreement; and (ii) report the violation to the Secretary.
- (c) Effect of Termination.
- (i) Except as provided in paragraph 5.2(c)(ii), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (ii) In the event that Business Associate determines that returning the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

5.3 Disputes.

Any controversy or claim arising out of or relating to the Agreement will be finally settled by compulsory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), except for injunctive relief as described below.

5.4 Injunctive Relief.

Notwithstanding any rights or remedies provided for in Section 5.3, Covered Entity retains all rights to seek injunctive relief to prevent the unauthorized use of disclosure of PHI by Business Associate or any agent, contractor or third party that received PHI from Business Associate.

5.5 Regulatory References.

A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

5.6 Amendment.

The Parties agree to take such action as is necessary to amend this Agreement from time to time to the extent necessary for Covered Entity to comply with the requirements of HIPAA and its regulations. All amendments to this agreement shall be in writing and signed by both parties.

5.7 Survival.

The respective rights and obligations of Business Associate and Covered Entity under Sections 4.4, 5.1 and 5.2(c) of this Agreement shall survive the termination of this Agreement.

5.8 Limitation of Damages.

Other than liabilities under Section 5.1, neither party shall be liable to the other for any special, incidental, exemplary, punitive or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any information pursuant to this Agreement, even if the other Party has been advised of the possibility of such damages.

5.9 Interpretation.

Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.



**City of Lucas
Council Agenda Request**

Council Meeting: December 5, 2013

Requestor: _____

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: _____

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

The City Council pursuant to Section 551.074 of the Texas Government Code may convene into Executive Session to discuss the hiring and appointment of the City Manager.

RECOMMENDED ACTION:

SUMMARY:

MOTION:

No action to be taken in Executive Session.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____
City Manager: _____ / _____



**City of Lucas
Council Agenda Request**

Council Meeting: December 5, 2013

Requestor: _____

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: _____

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Take any action as necessary from Executive Session.

RECOMMENDED ACTION:

SUMMARY:

MOTION:

I make a Motion to....

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____
City Manager: _____ / _____



**City of Lucas
Council Agenda Request**

Council Meeting: December 5, 2013

Requestor: _____

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: _____

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Adjournment.

RECOMMENDED ACTION:

SUMMARY:

MOTION:

I make a Motion to adjourn the meeting at _____ p.m.

APPROVED BY: _____ Initial/Date

Department Director: _____ / _____

City Manager: _____ / _____