

COUNCIL AGENDA STATEMENT



Meeting Date: August 13, 2019
To: Honorable Mayor and City Council Members
From: John A. Johnson, Fire Chief
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-73**, Approving A Fire Rescue – EMS Medical Director Agreement With Professional Emergency Services, Inc., In An Amount Not To Exceed \$40,000; Authorizing The City Manager To Execute The Agreement And Expend Budgeted Funds: And Providing For An Effective Date And Providing An Effective Date.

BACKGROUND & JUSTIFICATION:

The City of Marathon is responsible for providing emergency medical service within the City boundaries. The City is required by Chapter 401, *Florida Statutes*, to contract with a licensed physician to serve as the City’s “Medical Director”, also referred to as the “Fire Department Physician”.

Professional Emergency Services, Inc. is in the business of providing medical director services and meets the requirements of Florida Statutes. The City currently contracts with the Consultant for these services, and the present contract expires on September 30, 2019. The contracted amount for services is \$40,000. Staff recommends approval.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other _____	_____	_____
3. Not applicable_____		

FISCAL NOTE:

Funding for this agreement is included in the proposed FY20 Fire & EMS Budget.

RECOMMENDATION:

Council approve Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-73**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A FIRE RESCUE – EMS MEDICAL DIRECTOR AGREEMENT WITH PROFESSIONAL EMERGENCY SERVICES, INC., IN AN AMOUNT NOT TO EXCEED \$40,000; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon, Florida (the “City”) is responsible for providing emergency medical service within the City boundaries; and

WHEREAS, the City is required by Chapter 401, *Florida Statutes*, to contract with a licensed physician to serve as the City’s “Medical Director,” also referred to as the “Fire Department Physician;” and

WHEREAS, Professional Emergency Services, Inc. (the “Consultant”), is in business of providing medical director services and meets the requirements of Florida Statutes; and

WHEREAS, the City and Consultant desire enter into the attached Agreement in an amount not to exceed \$40,000.00 to be paid in monthly installments.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. An Agreement between the City and Consultant, pursuant to the agreement which is attached hereto as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved. The City Manager is authorized to execute the Contract and expend budgeted funds on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13th DAY OF AUGUST, 2019.

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

David Migut, City Attorney

AGREEMENT BETWEEN

THE CITY OF MARATHON, FLORIDA

AND

PROFESSIONAL EMERGENCY SERVICES, INC.

For A

MEDICAL DIRECTOR

This is an Agreement between the City of Marathon, Florida, a municipal corporation organized and existing under the laws of the State of Florida (together with its successors and assigns, hereinafter referred to as the “CITY”)

AND

Professional Emergency Services, Inc., (hereinafter referred to as the CONSULTANT) whose principle place of business is 10 High Point Road, Tavernier, FL 33070 and who is represented by Dr. Sandra Schwemmer.

WHEREAS, the CITY, as a provider of Emergency Medical Services to its citizens, is required by Chapter 401, Florida Statutes, to contract with a licensed physician to serve as the CITY’S “MEDICAL DIRECTOR”, also referred to as the “FIRE DEPARTMENT PHYSICIAN”; and

WHEREAS, the CONSULTANT meets the qualifications necessary to provide Medical Director services to the CITY and the CITY desires to utilize the services of the CONSULTANT.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments set forth below, the CITY and CONSULTANT agree as follows:

ARTICLE 1

SCOPE OF SERVICES

1.1 Under the direction of the Fire Chief and as defined in Florida Administrative Code Chapter 64J-1.004, Medical Direction, the CONSULTANT shall perform the services of Medical Director for the CITY’S Fire Rescue Emergency Medical Services Program as more particularly set forth herein:

1.1.1 Under the direction of the Fire Chief, advise, consult, train, and counsel the CITY’s Fire/Rescue system, overseeing appropriate quality assurance, but not including administration and managerial functions.

1.1.2 Develop medically correct standing orders or protocols that permit specified ALS and BLS procedures when communication cannot be established with a supervising physician or when and delay in patient care would potentially threaten the life or health of the patient.

1.1.3 Issue standing orders and protocols to the CITY to ensure that the CITY transports each of its patients to a facility that offers a type and level of care appropriate to the patient's medical condition if available within the service region.

1.1.4 Advise and implement a comprehensive plan for prompt medical review of all possible infectious exposures reported by Marathon Fire Rescue and firefighter personnel, and for post-exposure medical follow-up when indicated, in compliance with State and Federal requirements. Assist in the in-servicing of the individual firefighter personnel regarding the exposure policy.

1.1.5 An Infection Control Officer agreed upon by both parties, supplied by the Consultant on an as needed basis will be paid at a rate of 40.00 dollars an hour. This person shall be available for consultations with field personnel to determine the significance of any body fluid exposure and to suggest appropriate action for such an exposure, training and for follow up medical care.

1.1.6 Provide continuous 24-hour-per-day, 7-day-per-week medical direction, which shall include, in addition to the development of protocols and standing orders, medical review for all new hires and review of annual physicals, direction to CITY personnel as to availability of medical direction "off-line" services to resolve problems, system conflicts, and provide services in an emergency as that term is defined by Section 252.34(4), Florida Statutes.

1.1.7 Develop and implement a patient care quality assurance system to assess the medical performance of Paramedics and EMTs. Clerical and administrative support will be provided by the CITY Fire Department.

1.1.8 Audit the performance of system personnel by use of a quality assurance program, to include but not limited to, a prompt review of run reports, direct observation, and comparison of performance standards for drugs, equipment, system protocols and procedures.

1.1.9 Participate as appropriate in any other quality assurance programs developed by the Fire Department.

1.1.10 Possess a DEA registration, to provide controlled substance to the CITY. DEA registration shall include the address at which controlled substances are stored. Proof of such registration shall be maintained on file with the CITY and shall be readily available for inspection. The CITY will forward all renewal documents as received to

CONSULTANT to assure continuous registration and will reimburse CONSULTANT for cost of such registration.

1.1.11 Ensure and certify that security procedures for medications, fluids and controlled substances are in compliance with Chapters 499 and 893, Florida Statutes, and Chapter 64J, Florida Administrative Code as needed in the future.

1.1.12 Assist and coordinate with the Fire Chief written operating procedures creating, authorizing and ensuring adherence to rules and regulations regarding all aspects of the handling of medications, fluids and controlled substances by the CITY as it is needed.

1.1.13 Notify the Department of Health in writing, when applicable, of each substitution by the CITY of equipment or medication.

1.1.14 Review and approve documented hours for all EMT/Paramedic refresher course certifications.

1.1.15 Participate as crewmember on an EMS vehicle for a minimum of ten (10) hours per year to cover all shifts.

1.1.16 Complete a minimum of ten (10) hours per year on continuing medical education related to pre-hospital care or teaching or a combination of both.

1.1.17 Assume responsibility for the use by an EMT of an automatic or semi-automatic defibrillator; the performance of esophageal intubations by an EMT; the administration of subcutaneous epinephrine by an EMT; and on routine Interfacility transports, the monitoring and maintenance of non-medicated I.V.s by an EMT. The CONSULTANT shall ensure that the EMT is trained to perform these procedures; shall establish written protocols for the performance of these procedures; and shall provide written evidence to the Department documenting compliance with provisions of this paragraph.

ARTICLE 2

COMPENSATION AND METHOD OF PAYMENT

2.1 The City agrees to pay the CONSULTANT as full compensation for the services described in Article 1 an annual fee of \$34,000.00 to be paid to the CONSULTANT in twelve consecutive equal monthly installments of \$2,833.33. This fee includes all costs and expenses of CONSULTANT. Off-line Services and any other Services requested beyond the scope of this contract will be invoiced separately at a rate of \$250.00 per hour, which will be at a subject to approval of the City Manager. Infection control services shall be paid according to section 1.1.5. and billed to the CITY separately.

2.2 Additionally, the City agrees to pay the CONSULTANT, as full compensation for providing medical oversight for interfacility transfers, an annual fee of \$6,000.00, to be paid to the CONSULTANT in twelve consecutive equal monthly installments of \$500.00.

2.3 The CITY agrees to pay the CONSULTANT on the first day of the month for each month in which CONSULTANT'S service are rendered.

ARTICLE 3

DEFINITIONS

3.1 "Department" means the Department of Health, Bureau of EMS.

3.2 "Emergency medical technician" or "EMT" means a person who is certified by the department to perform basic life support.

3.3 "Medical direction" means direct supervision by a physician through a two-way voice communication or, when such voice communication is unavailable, through established standing orders, pursuant to rules of the department.

3.4 "Medical Director" means a physician who is employed or contracted by a licensee and who provides medical supervision, including appropriate quality assurance but not including administrative and managerial function, for daily operations and training.

3.5 "Paramedic" means a person who is certified by the Department to perform basic and advanced life support.

3.6 "Physician" means a practitioner who is licensed under the provisions of Chapter 458 and Chapter 459, Florida Statutes.

3.7 "Fire Department Physician" means a licensed doctor of medicine or osteopathy who has been designated by the fire department to provide professional expertise in the areas of occupational safety and health as they relate to emergency service.

3.8 "Fire Chief" means the highest-ranking officer in charge of fire rescue service.

ARTICLE 4

CONSULTANT RESPONSIBILITIES

4.1 In accordance with Section 401.265, Florida Statutes, and Rule 64J-1.004, Florida Administrative Code, the Medical Director shall possess and maintain through the term of this

Agreement a Florida license to practice medicine and shall maintain board certification in emergency medicine.

4.2 Dr. Sandra Schwemmer, D.O., FACOEP, FACEP is designated as the Medical Director / Fire Department Physician. The Medical Director shall designate an Associate Medical Director who shall be available if the Medical Director is on vacation, sick or otherwise unavailable. The Associate Medical Director is subject to approval by the City Manager or his designee.

4.3 CONSULTANT shall maintain participation in a regional or statewide physician group involved in pre-hospital care. Requested conference attendance will be reimbursed by the CITY, subject to approval of the City Manager.

4.4 The CONSULTANT shall perform such other duties and responsibilities as now are imposed or may be imposed during the term of this Agreement by Florida law, including but not limited to the applicable provisions of Chapters 252 and 401, Florida Statutes, and Rule 64J-1, Florida Administrative Code, as may be amended from time to time.

ARTICLE 5

CITY'S RESPONSIBILITY

5.1 The CITY shall assist the CONSULTANT by placing at its disposal all available information pertinent to the services to be performed by the CONSULTANT, including access to all EMT/P and EMT employment and medical records.

5.2 The CITY shall provide for the CONSULTANT'S use, during the term of this Agreement, a portable radio with MedCom channels, a digital pager and a Medical Director's identification badge, and appropriate secretarial support services, and any additional services that may be needed as approved by the Fire Chief.

ARTICLE 6

TERM

6.1 This Agreement shall commence on October 1, 2019, and shall continue through September 30, 2020, unless terminated earlier under Article 7. The CITY shall have the option to renew this Agreement for three additional one-year terms subject to the same terms and conditions, by providing the CONSULTANT with written notice to renew no less than thirty (30) days prior to the expiration date. If this Agreement is renewed under this Article 6, the CONSULTANT may be considered to a fee increase of five percent (5%) annually for each subsequent year.

ARTICLE 7

TERMINATION

7.1 If through any cause the CONSULTANT fails to fulfill its obligation under this Agreement, the CITY shall have the right to terminate this Agreement upon providing written thirty (30) days notice to the CONSULTANT.

7.2 This Agreement may be terminated by the CITY without cause upon ninety (90) days written notice to the CONSULTANT. If the CITY terminates without cause, the CONSULTANT shall be compensated for all service performed and approved by the CITY prior to the termination date, provided that all property belonging to the CITY is returned prior to release of final compensation to the CONSULTANT.

7.3 The CONSULTANT acknowledges that the CITY is a bona fide governmental entity of the State of Florida with the CITY'S fiscal year ending on September 30th of each calendar year. If the CITY does not appropriate sufficient funds to purchase the services required under this Agreement for any of the CITY'S fiscal years subsequent to the one in which the Agreement is executed and entered into, then this Agreement shall be terminated effective upon expiration of the fiscal year for which sufficient funds for the service provided for under this Agreement were last appropriated by the CITY. The CITY shall not, in this event, be obligated to pay for services beyond said fiscal year.

ARTICLE 8

MISCELLANEOUS

8.1 Ownership of Documents/Deliverables. Any files, documents, studies, run reports, training curriculum and other data prepared by the CONSULTANT, excluding standing medical orders and medical treatments protocols, in connection with this Agreement are and shall remain the property of the CITY, and shall be delivered to the CITY no later than thirty (30) days after termination of this Agreement.

8.2 No Contingent Fee. The CONSULTANT warrants the he/she has not employed or retained any company or person other than a bona fide employee or agent contractor working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the CITY shall have the right to terminate the Agreement without liability at its discretion, and to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

8.3 Policy on Non-Discrimination. The CONSULTANT shall not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, marital status or national origin, physical or mental disability.

8.4 Independent Contractor. The CONSULTANT is an independent contractor under this Agreement. Services provided by the CONSULTANT shall be by employees/contractors of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the CITY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to service rendered under this Agreement shall be those of the CONSULTANT.

8.5 Assignment; Amendments

8.5.1 The parties recognize that the service contemplated by the CONSULTANT are of a unique and personal nature and as such this Agreement shall not be assigned, transferred or otherwise encumbered by the CONSULTANT, without the prior written consent of the CITY.

8.5.2 It is further agreed that no renewal, modification, amendment or alteration in the terms or conditions of the Agreement, shall be effective unless contained in a written document executed with the same formality as the Agreement.

ARTICLE 9

INSURANCE

9.1.1 The CITY shall maintain in force and effect for the term of this Agreement the insurance described below.

9.1.2 Professional and General Liability. The CITY shall provide professional and general liability insurance with minimum limits of \$1,000,000.00 per occurrence for the CONSULTANT during the term of this Agreement. The CITY shall be responsible for maintaining this professional liability insurance for a minimum of three years from the date of termination of this Contract. The Professional and General Liability Insurance certificate will specify coverage for "EMS oversight."

9.1.3 The CITY will provide certificate or proof of such insurance to the CONSULTANT on an annual basis. CONSULTANT will be provided thirty (30) days notice of cancellation and/or any restrictions placed on coverages of the professional and general liability insurance provided/procured by the CITY during the term of this Agreement. The CITY will be responsible for the payment of any deductible and/or self-insured retention in the event of a claim.

9.1.4 To the fullest extent permitted by law, the CONSULTANT shall indemnify, defend and hold harmless the CITY, its officials, agents, employees, and volunteers from and

against any and all liability, suits, actions, damages, costs, losses, and expenses, including attorneys' fees, demands and claims for personal injury, bodily injury, sickness, disease or death or damage or destruction of tangible personal property or loss of use resulting from, arising of any errors, omissions, misconduct or negligent acts of the CONSULTANT, its officials, agents, employees, volunteers or subcontractors in the performance of the services of the CONSULTANT under this Agreement.

9.1.5 Representative of the CITY. It is recognized that questions in the day-to-day conduct of this Agreement will arise. The CITY designates the Fire Chief, or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

9.1.6 All Prior Agreements Superseded. This document incorporates all negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms shall be predicted upon any prior representations or agreements, whether oral or written.

9.1.7 Notices. Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For the CITY:

Office of the Fire Chief
Marathon Fire Rescue
8900 Overseas Highway
Marathon, FL 33050
Telephone: (305) 743-5266

With a copy to:

David Migut
City of Marathon Attorney
9805 Overseas Highway
Marathon, FL 33050

For the CONSULTANT:

Professional Emergency Services, Inc.
C/O Dr. Sandra Schwemmer
PO Box 379
Tavernier, FL 33070

9.2 Consent to Jurisdiction. The parties irrevocably submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of or relating to the Agreement, and unanimously agree that all claims in respect of such action or proceeding may be heard and determined in such court. Each party further agrees that venue of any action to enforce this Agreement shall be in Monroe County, Florida.

9.3 Governing Law/Attorney's Fees. The parties agree that this Agreement shall be construed in accordance with and governed by the laws of the State of Florida. If either the CITY or the CONSULTANT is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses including but not limited to court costs, and reasonable attorney's fees.

9.4 Headings. Headings are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

9.5 Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

9.6 Severability. If any provisions of this Agreement or its application to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or situations other than those to which it shall have been invalid or unenforceable shall not be affected, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

ARTICLE 10

OWNERSHIP AND ACCESS TO PUBLIC RECORDS

10.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the CONSULTANT providing services to the City under this Agreement shall be the property of the City.

10.2 The CONSULTANT is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONSULTANT does not transfer the records to the City.

4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If the CONSULTANT transfers all public records to the City upon completion of the contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.

10.3 “Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.

10.4 Should the CONSULTANT assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CONSULTANT.

10.5 The CONSULTANT consents to the City’s enforcement of the CONSULTANT’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CONSULTANT shall pay all court costs and reasonable attorney’s fees incurred by the City.

10.6 The CONSULTANT’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the CONSULTANT shall be grounds for immediate unilateral cancellation of this Agreement by the City.

10.7 IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first written above.

PROFESSIONAL EMERGENCY SERVICES,
INC.

BY: _____
Name: Dr. Sandra Schwemmer
Title: President

THE CITY OF MARATHON, FLORIDA

Chuck Lindsey, City Manager

ATTEST:

Diane Clavier
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

BY: _____
David Migut, City Attorney