

NO: R176 COUNCIL DATE: July 26, 2010

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **July 26, 2010**
FROM: **Fire Chief** FILE: **2240-20**
SUBJECT: **First Responder Consent and Indemnity Agreement with the Emergency Health Services Commission (EHSC)**

RECOMMENDATION

The Surrey Fire Services Department recommends that Council:

1. receive this report as information; and
2. authorize the appropriate City officials on behalf of the City of Surrey to execute a First Responder Consent and Indemnity Agreement, which is attached as Appendix "A" to this report, with the Emergency Health Services Commission.

PURPOSE

The purpose of this report is to obtain Council approval to enter into an agreement with the Emergency Health Services Commission that authorizes Emergency Medical Assistant First Responders in the Fire Services Department to provide pre-hospital emergency medical care and that indemnifies the City of Surrey against claims in relation to the provision of such services.

BACKGROUND

In 2009, Surrey's Fire Service First Responders attended 14,543 medical calls and approximately 4,000 motor vehicle accidents. All of Surrey's Fire Service's 324 career and volunteer responders are trained and licensed as Emergency Medical Assistant First Responders (EMA FR) under the *Emergency and Health Services Act* (the "Act").

The Act establishes the authority of the Emergency Health Services Commission (EHSC) to provide emergency health services, including the provision of ambulance services in the Province of B.C. and also establishes the Emergency Medical Assistants (EMAs) Licensing Board, which examines, registers and licenses EMAs in the Province of B.C. The Act specifically states, "Except with the written consent of the Commission and on terms it may specify, a person must not do anything that the Commission is given the power to do." As such, to provide emergency health services by its First Responders, the City of Surrey requires the approval of EHSC by way of an agreement.

Indemnity agreements have been part of the First Responder Program since its inception. The City of Surrey has signed an indemnity agreement on June 9, 2003. Recently, the EHSC has advised that wording changes to the agreement are necessary to address the requirements of the *Emergency and Health Services Act*.

DISCUSSION

The First Responder Agreement attached as Appendix "A" to this report achieves two major objectives. It documents the written consent of the Commission for the City of Surrey to provide emergency health services in accordance with the *Emergency Health Services Act*. It also acts to indemnify the City against claims that may be brought in relation to the provision of emergency medical care services by City personnel. Currently, the City of Surrey's insurance policy has a deductible of \$1.5 million dollars for accumulated annual losses including those losses related to Fire Service personnel activities. Under the terms of the recommended agreement with the EHSC, the Commission will address legal fees, defend or negotiate settlements and pay any compensation or other payments under settlements or judgments resulting from actions by the Surrey EMA FRs in relation to emergency medical services.

Legal Services has reviewed this report and has no concerns.

CONCLUSION

To satisfy the requirements of the Act and provide additional protection for the City of Surrey, it is recommended that Council authorize the appropriate officials of the City of Surrey to enter into the First Responder Consent and Indemnity Agreement, which is attached as Appendix "A" to this report, with the Emergency Health Services Commission.

A handwritten signature in black ink that reads "Len Garis". The signature is written in a cursive, flowing style.

Len Garis
Fire Chief

Appendix "A" – First Responder Consent and Indemnity Agreement with the EHSC

FIRST RESPONDER AGREEMENT (CONSENT AND INDEMNITY)

THIS AGREEMENT dated for reference the 7th day of July, 2010.

BETWEEN:

Her Majesty the Queen in Right of the Province of British Columbia,
represented by the Emergency and Health Services Commission
continued under the provisions of the *Emergency and Health
Services Act*, R.S.B.C. 1996, c. 182

(the "Commission")

AND: City of Surrey

(the "Agency")

(together the "Parties")

WHEREAS:

A. Under the provisions of the *Emergency and Health Services Act*, R.S.B.C. 1996, c. 182, the Commission has the power and authority to:

- (a) provide emergency health services in British Columbia; and
- (b) to assist hospitals, other health institutions and agencies, municipalities and other organizations and persons, to provide emergency health services and to train personnel to provide services, and to enter into agreements or arrangements for that purpose;

and no person may do anything that the Commission is given the power to do except with the written consent of the Commission, and on terms it may specify.

B. The Agency has employees or volunteer members who are licensed as Emergency Medical Assistants under the provisions of the *Emergency Medical Assistants Regulation*, B.C. Reg. 562/2004.

NOW THEREFORE, in consideration of the premises, and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the Parties), the Parties agree as follows:

1.0 INTERPRETATION

1.1 “Category” has the same meaning as in the Regulation;

“EMA FR” has the same meaning as in the Regulation, B.C. Reg. 562/2004;

“Emergency Health Service” has the same meaning as in the *Emergency and Health Services Act*;

“Emergency Medical Assistant” has the same meaning as in the *Emergency and Health Services Act*;

“First Nation” has the same meaning as in the *Community Charter*, S.B.C. 2003, c. 26;

“First Responder” means an individual who is licensed as an Emergency Medical Assistant in a Category;

“Local Authority” has the same meaning as in the *Community Charter*, S.B.C. 2003, c. 26;

“Regulation” means the *Emergency Medical Assistants Regulation*, B.C. Reg. 562/2004.

2.0 TERM

2.1 This Agreement comes into effect upon the date and year first written above and will continue until it is terminated in accordance with section 16.1.

3.0 CONSENT

3.1 The Commission consents to the Agency:

- (a) providing Emergency Health Services in British Columbia by way of its First Responders; and
- (b) training personnel to provide Emergency Health Services and entering into agreements or arrangements for that purpose;

(collectively “the Services”), subject to the terms and conditions contained in this Agreement.

4.0 REQUIREMENT TO BE A LEGAL ENTITY

- 4.1 The Agency must be a Local Authority or First Nation, or be a non-profit corporation.
- 4.2 An Agency which is not a Local Authority or First Nation must provide the Commission with:
- (a) a certificate of incorporation issued under the British Columbia *Society Act*, R.S.B.C. 1996, c. 433; or
 - (b) Letters Patent granted under the Federal *Canada Corporations Act*, Part 2, R.S.C. 1970, c. C-32.

5.0 DISPATCH

- 5.1 The Agency will only provide Emergency Health Services:
- (a) at the request of the Commission through its Emergency Medical Dispatch System; or
 - (b) if a First Responder who is:
 - (i) a volunteer approved by the Agency and in the course of conducting volunteer duties assigned by the Agency; or
 - (ii) employed by the Agency and in the course of employment, comes upon a person who, in the opinion of the First Responder, requires the immediate provision of Emergency Health Services, and the Agency notifies the Emergency Medical Dispatch System without unreasonable delay.

6.0 SERVICES

- 6.1 The Agency will only allow a First Responder to provide Emergency Health Services:
- (a) for which the First Responder has been trained and with respect to which the First Responder is licensed and holds a properly endorsed licence under the Regulation, but limited to only those

Emergency Health Services specified in subsection (b) of this section; and

- (b) as specified in Schedule 1 and Schedule 2 of the Regulation for the Category EMA FR regardless of Category in which the Emergency Medical Assistant is licensed.

7.0 DIRECTION

7.1 Subject to section 7.2, the Agency will require its First Responders to accept direction from an Emergency Medical Assistant employed by the Commission who has been dispatched by the British Columbia Ambulance Service to the scene of a medical emergency when:

- (a) both a First Responder and an Emergency Medical Assistant are in attendance;
- (b) the direction provided by the Emergency Medical Assistant is directly related to the provision of Emergency Health Services;
- (c) the direction provided by the Emergency Medical Assistant does not require the First Responder to provide any Emergency Health Services other than those Emergency Health Services specified in section 6.1 of this Agreement; and
- (d) the Agency has received the consent of the Commission under this Agreement to provide the Emergency Health Services for which direction is being given by the Emergency Medical Assistant.

7.2 First Responders may, at their discretion, accept direction or assistance from an off-duty Emergency Medical Assistant employed by the Commission if the First Responder believes that the direction is in the best interests of the patient.

8.0 INDEMNITY

8.1 To the extent that the Agency is not indemnified under a valid and collectible policy of insurance, the Commission will indemnify and save harmless the Agency, against and from, all claims which may be brought or made by any person against the Agency or its First Responders in consequence of providing the Services in British Columbia in accordance with this Agreement, and whether sustained or incurred by reason of negligence or default, including legal fees and disbursements.

- 8.2 Despite section 8.1, the Commission will not indemnify or save harmless the Agency against claims which are the result of:
- (a) the gross negligence or willful, wanton or reckless conduct of a First Responder in providing the Services;
 - (b) a First Responder providing Services for which they have not been trained and for which they are neither licensed nor hold a proper license endorsement under the *Emergency Medical Assistants Regulation*, B.C. Reg. 562/2004;
 - (c) a First Responder traveling to or from a location for the purposes of providing the Services;
 - (d) a First Responder sustaining bodily injury or death as a result of providing the Services;
 - (e) the Agency or a First Responder failing to comply with the terms of this Agreement.

9.0 **DEFENCE**

- 9.1 For the purpose of this part:

"Action" means any action in which a Claim is brought, made or advanced against the Agency;

"Claim" means any Claim contemplated by section 8.1;

"Judgment" means an award of damages or other monetary compensation made in an Action which the Agency is ordered to pay by any court having proper jurisdiction, as a result of any Claim brought made or advanced against the Agency; and

"Settlement" means an agreement to compromise a Claim or an Action.

- 9.2 Upon the Agency becoming aware of any pending or threatened Claim or Action, written notice must be given by or on behalf of the Agency to the Commission within ten business days.
- 9.3 The Commission will investigate each Action or Claim as the Commission considers necessary, and must pay the costs of any investigation.
- 9.4 If the Commission has reasonable grounds for believing that any of the circumstances described in section 8.2 applies to the Action, the

Commission may refuse to defend the Action. Such refusal will not relieve the Commission from its obligations to indemnify the Agency if it is subsequently determined that section 8.2 does not apply to the Action.

- 9.5 If the Commission obtains the written consent of the Agency (which the Agency agrees not to unreasonably withhold), the Commission may make a Settlement, provided that the Agency or its First Responders will not be required as part of the Settlement to admit liability.
- 9.6 If the Agency fails to give consent to the terms of a proposed Settlement under section 9.5, the Commission may require the Agency to negotiate or defend the Action independently of the Commission. In this case, any amount in excess of the Settlement negotiated by the Commission will not be recoverable under this Indemnity, and the Commission will only be responsible for legal fees and costs up to the time when the Settlement could have been made.
- 9.7 In respect of any claim or action which is founded upon any of the acts specified in section 8.2, the Agency will defend or negotiate a settlement and pay any compensation or other payment under any such settlement or any judgment.

10.0 COMMUNICATIONS

- 10.1 The Agency must provide the Commission with one of the following:
- (a) a telephone number which allows the Commission to communicate with the Agency; or
 - (b) proof that the First Responders can be efficiently dispatched by the Commission.

11.0 RELATIONSHIP

- 11.1 No partnership, joint venture, agency or other legal entity will be created by or will be deemed to be created by this Agreement or any actions of the Parties pursuant to this Agreement.

12.0 MONEY

- 12.1 The Agency will not in any manner whatsoever commit or purport to commit the Commission to the payment of money to any person, firm or corporation.

13.0 ASSIGNMENT

- 13.1 The Agency will not assign, directly or indirectly, this Agreement or any right under this Agreement.
- 13.2 The Agency will not sub-contract the provision of the Services.

14.0 NON-WAIVER

- 14.1 No term or condition of this Agreement and no breach by the Agency of any such term or condition will be deemed to have been waived unless such waiver is in writing signed by the Commission.
- 14.2 The written waiver by the Commission of any breach by the Agency of any term or condition of this Agreement will not be deemed to be a waiver of any other provision or any subsequent breach of the same or any other provision of this Agreement.

15.0 APPROVALS

- 15.1 This Agreement does not operate as a permit, license, approval or other statutory authority which the Agency may be required to obtain from the Province of British Columbia or any of its agencies in order to provide the Services.
- 15.2 Nothing in this Agreement is to be construed as interfering with the exercise by the Province of British Columbia or its agencies of any statutory power or duty.

16.0 TERMINATION

- 16.1 The Commission may terminate this Agreement immediately on giving written notice of termination to the Agency for the Agency's failure to comply with the terms and conditions of this Agreement; and both Parties may terminate the Agreement on giving thirty (30) days' written notice of termination to the other Party.

17.0 NOTICES

- 17.1 Any written communication must be mailed, personally delivered or faxed to the following address:

if to the Commission:

Director, First Responder Services
Emergency and Health Services Commission
302 – 2955 Virtual Way
Vancouver BC V5M 4X6
Fax: (604) 660-6702

if to the Agency:

Name: _____

Title: _____

Address: _____

Fax Number: _____

17.2 Any written communication from a Party will be deemed to have been received by the other Party on the third business day after mailing in British Columbia; on the date of personal delivery if personally delivered; or on the date of transmission if faxed.

17.3 Any Party may, from time to time, notify the other Party in writing of a change of address and, following the receipt of such notice, the new address will, for the purposes of section 17.1 of this Agreement, be deemed to be the mailing address of the Party giving notice.

18.0 EXECUTION

18.1 The Director, First Responder Services, is authorized to enter into and execute this Agreement on behalf of the Commission.

18.2 The Agency represents and warrants that it has authorized the signatory who has signed this Agreement on its behalf to enter into and execute this Agreement on its behalf without affixing the Agency’s common seal.

19.0 MISCELLANEOUS

19.1 All of the provisions of this Agreement in favour of the Commission, either at law or in equity, will survive any expiration or sooner termination of this Agreement.

- 19.2 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 19.3 No amendment or modification to this Agreement will be effective unless it is in writing and duly executed by the Parties.
- 19.4 If any provision of this Agreement or the application to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby, and will be enforceable to the extent permitted by law.
- 19.5 Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatsoever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.
- 19.6 Time will be of the essence in this Agreement.
- 19.7 The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of this Agreement.
- 19.8 Any reference to a statute in this Agreement, whether or not that statute has been defined, includes all regulations at any time made under or pursuant to that statute and any amendments to that statute.
- 19.9 In this Agreement, wherever the singular or neuter is used it will be construed as if the plural or masculine or feminine, as the case may be, had been used where the context so requires.
- 19.10 This Agreement will enure to the benefit of and be binding upon the Parties and their successors and permitted assigns.
- 19.11 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.

19.12 This Agreement may be executed in counterpart, which when taken together will constitute one and the same Agreement. This Agreement may be executed by the exchange of signed counterparts by facsimile transmission or electronically in PDF or similar secure format.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement the day and year first written.

Director, First Responder Services)
THE EMERGENCY AND HEALTH) _____
SERVICES COMMISSION)
) Name: _____
)
) Title: Director, First Responder
Services

Duly Authorized Signature of)
THE AGENCY) _____
)
) Name: _____
)
) Title: _____