

AGREEMENT AMONG THE TOWNS OF
DEERFIELD, SUNDERLAND and WHATELY
With respect to the South County Emergency Medical Services Operations

THIS AGREEMENT entered into as of the ____ day of _____, 2013 by and among the Towns of Deerfield, Sunderland and Whately, (hereinafter "the Towns").

WHEREAS the Towns wish to enter into an agreement pursuant to MGL c.40, §4A to cooperatively operate and maintain the South County Emergency Medical Services (hereinafter "SCEMS").

AND WHEREAS the parties to this AGREEMENT wish to establish uniform and equitable procedures respecting the financing, maintenance and operation of SCEMS.

NOW, THEREFORE, THE TOWNS ENTER INTO THIS AGREEMENT with each other, pursuant to the provisions of section 4A of MGL chapter 40, in manner and form as follows:

ARTICLE I, PURPOSE AND SCOPE

1. PURPOSE. The purpose of the Agreement is to provide shared emergency medical services (EMS) and transport services to the Towns through the cooperative use of EMS staff, equipment, apparatus and stations. The Towns commit to continuing to provide EMS services, and under this Agreement seek to make and continue cooperative improvements to EMS delivery to save lives and maximize the benefits to persons who need EMS.
2. SCOPE OF SERVICES
 - A. General. The Towns shall manage the operations of the SCEMS through the Governance structure described herein. The SCEMS shall provide paramedic level EMS for the benefit of individuals in the Towns, which shall include, but not be limited to, medical assessment, treatment and transportation. This service shall be on a 24 hours per day, seven days per week, continual basis during the entire term of the Agreement, with said services provided through personnel duly trained and certified in accordance with the requirements of the Commonwealth of Massachusetts Office of Emergency Medical Services.
 - B. Advanced Life Support ("ALS") and Mutual Aid. The Towns shall manage ALS Intercept and Mutual Aid response operation of the SCEMS through Standard Operating Procedures approved under the Governance structure described herein.
 - C. Disaster Response. The Towns shall manage disaster response operations of the SCEMS through Standard Operating Procedures approved under the Governance structure described herein.

ARTICLE II, GOVERNANCE

1. BOARD OF OVERSIGHT - The control and management of SCEMS will be the responsibility of a Board of Oversight.
 - A. COMPOSITION: The Board of Selectmen of each Member Town will appoint 2 (two) individuals who will serve on the Board of Oversight. In addition, the Fiscal

Agent identified in this agreement shall appoint one designee to serve on the Board of Oversight as a non-voting member. The SCEMS Ambulance Director will serve as a non-voting member. The Board of Oversight will elect from its members a Chairman, Vice-Chairman and Clerk. Each member of the Board of Oversight will have one vote, and the votes of each member will have equal weight.

- B. DUTIES: The Board of Oversight will have access to the Member Towns' personnel files of persons designated as SCEMS staff.

The Board of Oversight shall receive quarterly reports on personnel and personnel issues from the Ambulance Director. The Board of Oversight will be responsible for submitting quarterly reports to each of the Member Towns' Board of Selectmen.

The Board of Oversight will have overall supervision over the Ambulance Director. Day to day supervision will be provided by the Town Administrator or Town Manager of the Town of the Chairman of the Board of Oversight.

2. SCEMS AMBULANCE DIRECTOR

- A. APPOINTMENT: The SCEMS Ambulance Director will be appointed by Deerfield, taking into consideration the recommendation of the SCEMS Board of Oversight, and will work collectively with the Board of Oversight to make all recommendations regarding hiring and firing of SCEMS staff to the Board of Selectmen in the Town of Deerfield.
 - B. MINIMUM QUALIFICATIONS: The Ambulance Director will, at a minimum, be a certified Emergency Medical Technician and serve in both an administrative role as well as a clinical role. The Ambulance Director will be responsible for the day to day operations of the South County Emergency Medical Services.
 - C. REMOVAL. ETC - The Ambulance Director may be removed by the Deerfield Board of Selectmen, which shall first hold a hearing on the matter in compliance with the personnel policies/bylaws of that town, as well as the provisions of applicable state and federal law. The Board of Selectmen shall make the final decision after it conducts a hearing and shall take into consideration the recommendation of the Board of Oversight.
 - D. POSITION VACANCY - In the event the position of Ambulance Director becomes vacant, the Board of Oversight will be responsible for recommending a replacement to the Deerfield Board of Selectmen.
3. SCEMS EMPLOYEES – The Ambulance Director and all full-time and part-time SCEMS staff shall be deemed to be employees of the Town of Deerfield and eligible for all employee benefits made available to other Town employees, subject to the restrictions of applicable law and the personnel policies of the Town of Deerfield.
4. EMERGENCY MEDICAL TECHNICIANS, PARAMEDICS IN EACH TOWN - All qualified staff within each of the Member Towns' EMS programs as of the Effective Date will be given priority consideration in the hiring of staff for the SCEMS program.

ARTICLE III, TRANSITION

1. Each Member Town will supply a list of all the equipment that is currently within the possession of the ambulance department with the exception of the individual EMS staff members' jump kits. The Board of Oversight will review the list of equipment and decide which items will become part of the regionally based South County Emergency Medical Services operation. A master inventory list of such equipment, including serial numbers and other applicable identifying information, will then be attached to this Agreement as an appendix. All equipment that does not become part of the regional SCEMS will remain in the individual towns for use by the first responders within the town.
2. During the Transition stage toward the regional operations provided for under this Agreement, each town will retain an ambulance director, who will serve on the Board of Oversight.
3. All expenses and revenues of the Member Towns related to EMS and ambulance services performed prior to the effective date of this Agreement will be accounted for by, and be the responsibility of, the Town that performed the service.

ARTICLE IV, BUDGETING AND FINANCE

1. FISCAL AGENT - The Town of Deerfield shall serve as Fiscal Agent for SCEMS and shall have control of and be responsible for all receipts and disbursements associated with the operation and maintenance of SCEMS, irrespective of source. SCEMS is, for fiscal purposes, hereby deemed a department of the Town of Deerfield. All expenses of SCEMS are subject to appropriation by the Town of Deerfield, and the designated contributions from or on behalf of the Towns of Sunderland and Whately. Individual yearly assessments to the Member Towns will be calculated according to Section 4 of this Article and divided into 4 equal installments for billing purposes. The Town of Deerfield will bill the other Member Towns their quarterly assessments on July 1, October 1, January 1 and April 1 of each year. Quarterly assessments will be payable to the Town of Deerfield within 30 days of the date of billing. All funds received by SCEMS for operating purposes shall be maintained by the Fiscal Agent in a fund designated solely for SCEMS operating expenses, and all disbursements from the fund shall be separately accounted for. All funds received by SCEMS for capital purposes shall be maintained by the Fiscal Agent in a fund designated solely for SCEMS capital expenses, and all disbursements from the fund shall be separately accounted for.

- A. FISCAL AGENCY EXPENSE - All expenses relating to the administration of the SCEMS incurred by the Town of Deerfield will be included in the SCEMS budget as part of the operating costs to be appropriated by the member towns as part of their designated contributions to the budget.

B. ANNUAL BUDGET:

- a. PREPARATION - It shall be the duty of the SCEMS Ambulance Director, in consultation with the Board of Oversight, to prepare an annual operating and maintenance budget and submit it in a timely manner to the Boards of Selectmen of the Towns. The budget shall be presented in a format which incorporates the following provisions:

- i. Total Budget - The total of all proposed operating and maintenance expenditures, and capital expenditures.
 - ii. Applicable Estimated Receipts - An enumeration of all anticipated receipts and other revenues (other than those received from appropriations by the Towns) which will be utilized to defray any part of the total budgeted expenditures.
 - iii. Net Budget - The difference between the Total Budget and Applicable Estimated Receipts which shall equal the proposed amount to be appropriated by the Towns. The Net Budget will be apportioned according to Section 1.B(b). (Annual Budget – Apportionment of Costs)
 - iv. Operating Budget - Those budget lines included within the Total Budget which pertain to the operation of SCEMS and the operation and maintenance of the physical space utilized by SCEMS as stated in the building lease agreement with the South Deerfield Fire District Prudential Committee for the building located at 84 Greenfield Road, South Deerfield, Massachusetts (the “Primary Building”), and in the building lease agreement with the Sunderland Board of Selectmen for the building located at 105 River Road, Sunderland, Massachusetts (the “Reserve Building”), including but not limited to utilities, rents and leases, heat, custodial services and supplies, related insurances, snow removal, acquisition of fixed assets, and repair of fixed assets, will be apportioned according to Section 1.B(b) of this Article (Annual Budget – Apportionment of Costs). Operating and maintenance costs related to the Primary Building’s physical space not utilized by SCEMS will be the responsibility of the South Deerfield Fire District. Operating and maintenance costs related to the Reserve Building’s physical space not utilized by SCEMS will be the responsibility of the Town of Sunderland.
 - v. Capital Budget - Capital improvements specifically related to the capital equipment and the portion of the Buildings used solely by SCEMS will be apportioned according to Section 1.B(b) of this Article (Annual Budget – Apportionment of Costs). Capital projects related to the structure (shell or building envelope) of the Primary Building and all mechanical operations of the Building itself will be the responsibility of South Deerfield Fire District. Capital projects related to the structure (shell or building envelope) of the Reserve Building and all mechanical operations of the Building itself will be the responsibility of the Town of Sunderland.
- b. APPORTIONMENT OF COSTS - The Net Budget of the SCEMS, including Operating and Capital budget items, shall be apportioned to the Towns using a 50% equalized valuation (EQV) and 50% population formula, as follows: 50% shall be apportioned based on the ratio obtained by dividing the equalized valuation of a Member Town by the total equalized valuation of all Member Towns, and 50% shall be apportioned based on the ratio obtained by dividing the total population of a Member Town by the total population of all Member Towns. The EQV used will be the most recent EQV approved by the Massachusetts Department of Revenue. The population figure used will be the January 1st population prior to the start of the fiscal year provided by the Town Clerks of the Member Towns.

- c. APPROVAL - The approval of the Net Budget of SCEMS, as prepared by the Ambulance Director, is subject to appropriation by the Member Towns of their respective assessment amounts.
 - i. A majority affirmative vote of each town's town meeting is required to approve its respective budget apportionment.
 - ii. Approval of the Net Budget shall require approval by all Member Towns of their respective budget apportionments.
 - 1. If the Net Budget is not voted in the affirmative by all Member Towns the budget will be brought back to the Board of Oversight for its reconsideration, revision and resubmission to the Member Towns on the basis of the issues raised.
 - 2. The revised Net Budget will then be presented to Town Meeting in each Member Town for approval of the respective budget reapportionments.
 - 3. If the revised Net Budget has not been approved by the June 30 prior to the start of the fiscal year for which the Net Budget has been prepared, then, subject to the provisions of Article V, this Agreement shall terminate as to each Member Town that has failed to approve said budget. The Member Towns who have so approved said budget may choose to continue the Agreement on such terms and conditions, and subject to further appropriation, as they agree are reasonable and necessary. If such Member Towns do not elect to continue the Agreement, the Agreement shall terminate, subject to the provisions of Article V.
- 2. EMERGENCY EXPENDITURES - Unforeseen and extraordinary expenditures relating to the operation of SCEMS shall be shared by the Towns consistent with the apportionment ratios set forth in Section 1.B(b) of this Article, and subject to appropriation by the Towns.

ARTICLE V, GENERAL CONTRACT CONDITIONS

- 1. TERM OF AGREEMENT – The term of the Agreement shall be for a one-year period from the Effective Date contained herein, subject to appropriation by all Member Towns. Thereafter, this Agreement shall renew automatically for successive three-year terms, subject to appropriation in each fiscal year.
- 2. AMENDMENTS – This Agreement shall be reviewed by the Board of Oversight and SCEMS Ambulance Director on an annual basis. No amendment to this Agreement shall be effective unless it is in writing, signed by a majority of the Board of Selectmen in each Town and complies with the provisions of the Agreement and all other regulations and requirements of law. Substantial changes to the Agreement such as a change in location, or the addition of a Member Town shall require Town Meeting approval in each then existing Member Town.
- 3. TERMINATION – This Agreement may be terminated by any Town, by vote of Town Meeting, for any reason upon written notice from the date received by the Board of

Oversight and the Boards of Selectmen in the other Member Towns, sent by certified mail, return receipt requested. Such notice shall be signed by a majority of the Board of Selectmen in the notifying Town. The effective date of such termination shall not be earlier than the first day of the second July following the date such written notice is received by the Board of Oversight and other Member Towns. Upon the date of termination by any Town, SCEMS and the remaining Towns are relieved of any and all responsibilities under the Agreement to the terminating Town. Any Town which terminates this Agreement shall be prohibited from subsequently opting in to the Agreement for a period of two years from the date of its termination. The terminating Town will be responsible for its share of the budget for the time remaining in its membership. A terminating Town may retrieve and restore to its own possession and use any item of equipment, less disposable supplies, designated as contributed to the SCEMS operation in the master inventory list maintained pursuant to Article III.

4. OPT-IN – Any municipality wishing to join this Agreement shall make such request in writing to the Board of Oversight, which shall submit a recommendation to the Board of Selectmen in each Member Town. Costs associated with opt-in will be negotiated on a case by case basis and will be in the form of either payment in cash or provision of assets and will be negotiated by the Board of Oversight prior to the recommendation to the Boards of Selectmen. Approval for membership in this Agreement is not effective until approval is voted at an Annual or Special Town Meeting within each Member Town and all Member Towns must approve addition of the new member. Once the new Member Town is accepted into this Agreement, it will pay the previously negotiated opt-in cost. The new member must also pay its proportionate share of the Net Budget at the time of opting in, prorated to the day on which services to the new member begin under this Agreement.
5. INDEMNIFICATION AND INSURANCE - To the extent permitted by law, each Member Town shall each indemnify the other Towns from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages and any and all claims, demands and liabilities whatsoever of every name and nature both in law and in equity on account of injury to person or property or loss of life resulting from SCEMS performance under this Agreement but only to the extent and in an amount for which the Town would otherwise be liable pursuant to the Massachusetts Tort Claims Act, MGL c.258. During the term of this Agreement each party shall maintain, with respect to its own operations, its own insurance coverage of the following kinds and minimum amounts, or such other amounts as the parties may agree in writing are satisfactory:
 - (a) Commercial General Liability coverage: \$1,000,000.00, Combined Single Limit (CSL)
 - (b) Automobile Liability coverage: \$1,000,000.00 CSL.
 - (c) Workers' compensation coverage (per Massachusetts law) at statutory limits and Employer's Liability coverage: \$500,000.00.
6. WAIVERS – All covenants, conditions, duties and obligations contained herein can be waived only by written agreement by and among all Towns. Such waivers shall not be effective unless they are in conformity with all other requirements of law. Forbearance or indulgence in any form or manner by any Town in one instance shall not be construed as a waiver of the Town's rights under this Agreement or forbearance or indulgence in any other instance, nor in any way limit the legal or equitable remedies available to any Town.

No Town’s waiver of any default or breach of another Member Town shall constitute a waiver of any subsequent default or breach.

7. FORCE MAJEURE – None of the Towns shall be liable to the others, nor deemed in breach of this Agreement for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to: acts of God or the enemy, war, fires, floods, epidemics, quarantine restrictions, strikes, unforeseen freight embargoes, or unusually severe weather. SCEMS performance delays or failure shall be excused to the extent that the delays were caused by Force Majeure, provided that SCEMS notifies the Board of Oversight promptly of the existence and nature of such delay.
8. CONFLICT OF INTEREST – No officer, employee, agent or member of SCEMS, the Board of Oversight or any of the Town’s Boards of Selectmen shall participate in any decision or service relating to this Agreement that affects the personal interest of such officer, employee, agent, or member, whether such interest is direct or indirect. The Towns shall take all reasonable actions necessary to ensure that their officers, employees, agents, and members of their governing bodies are aware of the requirements, and comply with the provisions of MGL c.268A, the so-called Conflict of Interest Law.
9. SEVERABILITY – If any provision of the Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.
10. APPLICABLE LAW – The Towns agree to comply with all applicable local, state and federal laws, regulations and orders relating to the performance of this Agreement. The Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.
11. EFFECTIVE DATE - This AGREEMENT becomes effective the first day of January following the date of approval by the third Member Town so voting to approve membership in the Agreement (the “Effective Date”).

Deerfield
Board of Selectmen

Sunderland
Board of Selectmen

Whately
Board of Selectmen

Mark Gilmore

Scott Bergeron

Jonathan Edwards

Carolyn Shores Ness

David Pierce

Paul K. Newlin

David Wolfram

Thomas Fydenkevez

Joyce Palmer Fortune

Date: _____

Date: _____

Date: _____

Version date: 11-18-13