



City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: June 2, 2009

SUBJECT: Urgency Ordinance to Establish Fees for Emergency Services and
Authorization to Enter Into a Service Agreement to Assess Those Fees

Report in Brief

The Woodland Fire Department is a full-service fire department providing emergency response to medical, fire, and rescue emergencies as well as natural and man-made disasters. Despite the implementation of strategies to reduce operating costs, the impact of the current economy has forced the Fire Department to consider significant reductions that would adversely impact emergency response. As an alternative to significant reductions, the Fire Department has reviewed new revenue sources to maintain current service delivery levels. One of these options involves billing insurance companies for our emergency services that respond to various incidents. This strategy has been implemented in many other municipal fire departments and fire districts across the United States.

Staff recommends that the City Council approve and adopt Urgency Ordinance No. ____ to amend Chapter 9 of the Woodland Municipal Code to establish fees for emergency services and authorize the services agreement between the City of Woodland and Fire Recovery USA, LLC (Fire Recovery) for billing and collection of fees for fire department emergency services as described herein.

Background

The Woodland Fire Department (Fire Department) exists to protect life and property from fire through education, prevention, rapid fire attack, and fire investigation. The Fire Department also provides pre-hospital emergency medical care, limited rescue services, hazardous materials response and response services to any and all natural and man-made disasters. Fire Department staff continues to experience increased demands for emergency response service despite the current recessionary economy. As with all departments, the Fire Department is dealing with the prospect of significant expenditure reductions.

The Fire Department has sustained the elimination of several firefighter positions and one (1) Operations Deputy Chief since FY 08 due to revenue reductions. Additional reductions in funding

would result in the further loss of firefighters and may require rotating station closures called “brown outs”. If additional reductions occur, response times to fire and medical calls where rapid response is critical to save lives will increase. The Department may no longer have the staffing to support a rapid interior fire attack in many cases meaning burning structures and anybody who might be trapped inside will be lost while we focus our efforts on keeping neighboring structures from burning. Any decrease in structure fire response capabilities will result in a decreased rating by the Insurance Services Office (ISO) resulting in a potential increase to residential and commercial fire insurance rates for Woodland property owners.

The current recessionary economy and reductions in tax revenues have forced local governments all across the country to closely examine benefits of their current services and to determine the best utilization of tax dollars. The Fire Department is funded by the General Fund through tax dollars meaning residents and business owners of Woodland are the primary funding source. Since those revenues are not able to keep up with increased service demands then either new revenue sources need to be pursued or service delivery must be reduced. As an alternative, Fire Department staff has sought new and creative ways to increase funding so that the standard of care desired by the community would be maintained.

One of the alternatives that staff believed had the potential for generating new revenues was the concept of billing to recover a portion of the cost associated with emergency response. Staff became aware of a company, Fire Recovery USA that provides a billing and collection service for emergency response. In the course of researching Fire Recovery, staff received a presentation on the services they provide and the revenue this program might generate. Fire Recovery’s system is not a fund-generating program; it is a fund “recovery” program. This program’s primary function is designed to recoup the money spent for emergency response provided to individuals who through their actions necessitated the Fire Department’s response. Communities recycle that money back into the budget for services that directly benefit the taxpayers.

Discussion

Fire Recovery provides their services to fire and police agencies throughout the United States. By agreement, Fire Recovery will work for the Fire Department in billing insurance companies, not individuals, for response services. Fire Recovery has a staff experienced in working with insurance companies and they use a standardized fee schedule adopted by over 80 insurance companies as Usual, Customary and Reasonable (UCR). Fire Recovery developed their UCR rates by itemizing costs for a typical response run (from the time a fire apparatus leaves the station until it returns to the station). They surveyed dozens of fire departments nationwide to confirm their figures. These rates are based on actual costs using amortized schedules for apparatus (including useful life, equipment, repairs, and maintenance). Labor rates include an average department’s actual expenses, including salaries and benefits.

Most insurance companies know that a quick response by a well-staffed, well-equipped fire department results in reduced fire damage, reduced injury severity, and greater prevention of deaths.

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The end result is less liability, resulting in lower costs to the insurance industry. A safer community actually affords its residents lower insurance premiums on their homes and automobiles.

Other insurance companies are supportive of this program simply because it offers them a competitive edge by potentially capturing some of the market from those companies that choose not to provide this coverage to its policyholders.

Fire Recovery would perform the third party billing and collection services thus reducing the amount of time that City staff would have to expend to manage the program. Fire Recovery's billing process is very simple and not time intensive. When the Fire Department is called to the scene of an emergency, it performs the necessary services and then completes a one-page form capturing all of the information needed for Fire Recovery to bill the insurance company. The form is then submitted to Fire Recovery who bills the insurance company, if known, or the bill is sent to the individual with instructions to forward the bill to their insurance company. If an individual is not insured, then the claim is dropped and recovery is no longer pursued. When the claim is paid to Fire Recovery by the insurance company, Fire Recovery retains 20% of the proceeds for their fees and forwards the remaining 80% to the City. Fire Recovery claims a recovery rate of over 60%.

Fire Recovery provides fire departments with their UCR standardized billing rates and also allows fire departments to adopt their own fee schedule. Staff research reveals that departments using the UCR rates developed by Fire Recovery get their claims processed and paid quicker and with a higher rate of return because these fees are not challenged. Such has been the case with the Upland, California Fire Department according to Fire Chief Mike Antonucci who has used both methods. The Upland Fire Department is probably the longest standing customer with Fire Recovery in California and started using their own fees with inconsistent success. Chief Antonucci found their claims were being processed and paid much quicker and more successfully once they started using Fire Recovery's UCR fee schedule. Fire Department staff has compared the standardized Fire Recovery billing rates with the Fire Department's actual costs of providing services, and have determined that the Fire Recovery rates do not exceed the actual costs of providing services.

One concern expressed is that billing insurance companies will cause insurance rates to rise. Staff understands that most insurance companies forecast the cost for these claims; however, individual cities lack the time and resources to bill or collect these fees and those insurance funds are never tapped. In addition, increasing rates would require the individual companies to file an extensive cost report with the State Insurance Commissioner. If an individual is determined to be at-fault for the emergency or accident the Fire Department responds to, the individual's premium may or may not be adjusted based on a variety of factors. This adjustment would occur whether this program is in place or not.

Another concern expressed is that residents of Woodland are already paying for fire protection through taxes and this would be a "double tax". While the Fire Department is funded by the General Fund, most residents and property owners do not use emergency services and many non-residents and visitors are users. The Fire Department responds to assist some residents frequently, some

residents perhaps once in their lifetime and non-residents involved in motor vehicle accidents or medical emergencies while visiting or passing through Woodland. This pattern of use is really no different than billing the public services or the use of City facilities such as the Community and Senior Center. That facility was built using taxpayer dollars yet users of that facility are also assessed a user's fee should they desire reserved use for an event. Staff is proposing a "user's fee" for emergency services with this ordinance and service agreement for incidents that require a response that may be reasonably billed to the requesting party's insurance company.

Finally, it is important for the Council to note that staff has the ability to exercise some discretion over the billing process. If the circumstances associated with an incident are unclear and the responsible party is impossible to determine for any reason, staff has the ability to not provide the information to Fire Recovery and therefore billing will not occur. The recommended action assumes that billing for emergency response will proceed if at all possible and withholding information to avoid billing would only be considered under exceptional conditions.

Fee Schedule A in the attached service agreement includes tiered billing rates for the Fire Department's emergency response to, and services provided at, various incident types. The fees recommended for adoption in Schedule A are Fire Recovery's standard fees, and cover the following incident types:

- Motor vehicle accidents
 - Starts with a basic response to provide scene safety, traffic control if needed, patient contact, and hazard control if needed defined as Level 1 to more involved levels of services such as the cleanup of motor fluids, the suppressing of car fires, the extrication of trapped occupants, to establishing air ambulance landing zones defined as Level 5; the fees range from \$435 at Level 1 to \$2,100 at Level 5
- Hazardous materials incidents
 - Starts with a basic response to establish a perimeter and scene command defined as Level 1 to establishing a decontamination corridor and donning chemical protective suits and respiratory protection at Level 3; the fees range from \$700 at Level 1 to over \$5,900 at Level 3
- Bomb squad responses
 - Initial response only to establish perimeter, establish medical command and provide EMS stand-by defined as Level 1 at \$700
- Pipeline breakages/repairs (i.e., gas, sewer, septic to sewer, and water pipelines)
 - Starts with a basic response to evacuate, establish a perimeter and establish command at Level 1 (\$400) to taking offensive action wearing protective clothing, respiratory protection, etc at Level 3 (over \$1,000)
- Arson investigation
 - Includes Scene safety, source identification, use of specialized identification equipment, and completion of the investigation report charged at \$275 per hour

- Structure fires
 - Includes an hourly rate for response, scene safety, suppression if needed, traffic control if needed, patient contact if needed, hazard control, and investigation charged at \$300 per hour

Because the Woodland Municipal Code does not currently allow for emergency services fees, the City Council will need to adopt an ordinance if it wishes to allow for these fees. The ordinance has been proposed as an urgency ordinance so that it will have immediate effect and allow for the immediate execution of the fee agreement and commencement of fee collection. State law allows an urgency ordinance to be adopted for “the immediate preservation of the public peace, health or safety” if it contains findings regarding the nature of the urgency, and is passed by a four-fifths vote of the City Council. The proposed ordinance contains findings indicating that the City’s financial situation requires the immediate passage of the ordinance. Adoption of the ordinance on a non-urgency basis will delay implementation of the fee agreement by 44 days, potentially costing the City \$20,000 in revenue that is badly needed to support the Fire Department.

Fiscal Impact

There is no upfront cost to the City. Fire Recovery is paid from a portion of the money it receives for the City. Fire Recovery keeps 20% of the money collected, and the City would receive 80% of the money collected projected to be \$167,000 annually based on 2008 response statistics.

Public Contact

Posting of the City Council agenda. In addition, the concept of establishing fees for emergency response as described herein has been discussed at the City Council budget workshop on March 31, and public meetings focusing on the City’s General Fund on April 9, 16, 20 and 27. During these discussions no comments objecting to the establishment of the fees were received.

Alternative Courses of Action

1. Approve and adopt Urgency Ordinance No. ____ to amend Chapter 9 of the Woodland Municipal Code to establish fees for emergency services and authorize the services agreement between the City of Woodland and Fire Recovery USA, LLC (Fire Recovery) for billing and collection of fees for fire department emergency services as described herein.
2. Cease further consideration of establishing fees and a process for billing for emergency response services and direct staff to further reduce the FY 10 budget \$167,000.

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Recommendation for Action

Staff recommends that the City Council approve Alternative No. 1

Prepared by: Tod Reddish
Fire Chief

Mark G. Deven
City Manager

Attachments:

- Ordinance to amend Chapter 9 of the Woodland Municipal Code to authorize establishment of fees for emergency services
- Services Agreement between the City of Woodland and Fire Recovery USA, LLC

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WOODLAND, CALIFORNIA TO AMEND CHAPTER 9 OF THE WOODLAND MUNICIPAL CODE TO AUTHORIZE THE ESTABLISHMENT OF FEES FOR EMERGENCY SERVICES

WHEREAS, the City of Woodland operates a first-class Fire Department, which provides timely and efficient emergency services to Woodland's residents and visitors;

WHEREAS, the Fire Department responds to a high volume of calls for service, including calls at the sites of motor vehicle accidents, structure fires, hazardous materials spills, and other incidents, and the volume of these calls will continue to increase as Woodland grows;

WHEREAS, the Fire Department and the City in general are operating under significant budgetary limitations as a result of California's ongoing public fiscal crisis;

WHEREAS, the high volume of calls responded to by the Fire Department represents a significant drain on the finances of both the Fire Department and the City, and could jeopardize the City's ability to continue to operate a first-class Fire Department;

WHEREAS, operation of a first-class Fire Department, with modern equipment and sufficient numbers of trained professional personnel, is essential for the protection of the health, safety, and welfare of Woodland's residents and visitors; and

WHEREAS, the City Council has determined that recovery of certain costs incurred in responding to calls for Fire Department services is essential for the continued operation of the Fire Department as a modern, professional, and first-class public safety operation, which ultimately reduces the costs incurred by motorists, property owners, members of the general public, and their insurers, by minimizing personal injury and property damage through fast and capable responses to accident, fire, spill, and other incidents; and

WHEREAS, in recognition of the foregoing, the City Council wishes to provide for the establishment of user fees to be charged to drivers involved in motor vehicle accidents, owners of properties involved in structure fires, persons responsible for hazardous materials spills, and all other persons responsible for incidents requiring a response by Fire Department personnel, not to exceed the City's actual costs of providing such responses; and

WHEREAS, pursuant to Government Code section 66018, a duly noticed public hearing has been held concerning the establishment of fees as described in this ordinance, during which all persons present have had an opportunity to be heard concerning the proposed fees, notice of which was published pursuant to Government Code section 6062a; and

WHEREAS, City staff have recommended contracting with Fire Recovery USA for the billing and collection of fees for emergency services, as authorized by this ordinance; and

WHEREAS, the City Council wishes to authorize the execution of a contract with Fire

Recovery USA for the billing and collection of emergency services fees, and wishes to establish fees for emergency services as set forth in the contract; and

WHEREAS, the City’s existing budget shortfall and the likelihood of future reductions in revenues make it imperative that the City take immediate steps to generate additional revenue to fund emergency services and other services, in order to ensure the preservation of the public peace, health, and safety; and

WHEREAS, the adoption of this ordinance requires re-titling Chapter 9 of the Woodland Municipal Code to more accurately reflect the contents of the chapter;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODLAND DOES ORDAIN AS FOLLOWS:

Section 1. Urgency Findings. The City Council of the City of Woodland hereby adopts the foregoing recitals as its findings that the adoption of this urgency ordinance is necessary to promote the immediate preservation of the public peace, health and safety, by generating revenue to offset the cost of providing emergency services. The City Council hereby adopts, by no less than a four-fifths vote, this urgency ordinance based upon the foregoing findings and pursuant to Government Code Section 36937.

Section 2. New sections 9-12 and 9-13 are hereby added to Chapter 9 of the Woodland Municipal Code, to read as follows:

“9-12 Authorization for User Fees.

The City may establish and impose user fees for services provided by the Woodland Fire Department in responding to the scene of any incident, including but not limited to motor vehicle accidents, structure fires, and hazardous materials spills. The fees shall vary based on the type and amount of services provided, and shall take into account the cost of personnel, supplies, and equipment present or used at the scene. The fees shall be reasonable and shall not exceed the City’s actual costs of providing services to any accident for which fees are imposed.

9-13 Collection and Use of User Fees.

Applicable fees established pursuant to Section 9-12 shall be billed to the insurance carrier providing automobile insurance coverage for each driver in an accident for which services are rendered, and may be billed to the insurance carrier providing insurance coverage for any real property involved in a fire or providing other insurance coverage which may cover an incident in connection with which the Woodland Fire Department provides services. The City may contract with a third-party service provider for the billing and/or collection of such fees. All revenue collected from such fees shall be placed in the City’s General Fund and may be used for any lawful purpose.

Section 3. Chapter 9 of the Woodland Municipal Code is hereby re-titled “Fire Prevention and Emergency Services”.

Section 4. The City Manager is hereby authorized and directed to execute, on behalf of the City, the agreement attached hereto as Exhibit “A”, and the schedule of fees for emergency services set forth therein as Schedule “A” is hereby adopted. The City Council may approve amendments to this schedule of fees by resolution.

Section 5. CEQA. Adoption of this Ordinance is exempt from the California Environmental Quality Act pursuant to Section 15061(b) (3) of the CEQA Guidelines (14 CCR 15061(b) (3)). CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. It is therefore found and declared that the adoption of this Ordinance will not have a significant effect on the environment, as the user fees established herein will have only financial effects.

Section 6. Severability. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

Section 7. Effective Date and Publication. This Ordinance shall be published as required by law and shall take immediate effect upon its passage by 4/5 vote of the City Council.

PASSED AND ADOPTED this _____ day of _____, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marlin H. Davies
Mayor

ATTEST:

Sue Vannucci
City Clerk

APPROVED AS TO FORM:

Andrew J. Morris
City Attorney

Exhibit "A"

Services Agreement

[attached on following pages]

SACRAMENTO\AMORRIS\57096.1

SERVICES AGREEMENT

This Services Agreement (“Agreement”) is made effective as of _____, 2009 (“Effective Date”), by and between **FIRE RECOVERY USA, LLC.**, a California limited liability company (“Company”), and the City of Woodland, a California municipal corporation, (“City”). The Company and City are referred to herein individually as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, Company engages in the business of performing billing and collection services (“Company Services”) for United States fire departments in connection with motor vehicle accidents (“MVA”) and other services at which the fire departments provide emergency services;

WHEREAS, City seeks the services of Company to assist with the billing and collection for services that City provides, through the Woodland Fire Department, in connection with MVA and other services; and

WHEREAS, Company and City desire to enter into this Agreement to memorialize their agreements regarding the Company Services to be provided to City.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and City agree as follows:

ARTICLE 1 ENGAGEMENT

1.1. Engagement. City hereby engages Company to provide the services described herein, and Company hereby accepts such engagement, all on the terms and conditions set forth herein. Company will determine the method, detail and means of performing the services detailed below, subject to the requirements of this Agreement.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties of Company. Company hereby represents and warrants to City that, at all times during the term of this Agreement, Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California.

2.2. Representations and Warranties of City. City hereby represents and warrants to Company that, at all times during the term of this Agreement, City maintains an organized fire fighting unit established pursuant to the laws of the State of California.

ARTICLE 3
COMPANY STATUS AND QUALIFICATIONS

3.1. Independent Contractor. Company enters into this Agreement, and will remain throughout the term of the Agreement, as an independent contractor. Company agrees that it will not become an employee, partner, agent or principal of City while this Agreement is in effect.

3.2. Payment of Income Taxes. Company is responsible for paying when due all income taxes, including estimated taxes, incurred as a result of the compensation paid by City to Company for services rendered under this Agreement. On request, Company will provide City with proof of timely payment. Company agrees to indemnify City for any claims, costs, losses, fees, penalties, interest, or damages suffered by City resulting from Company's failure to comply with this provision.

3.3. Use of Employees or Subcontractors. Company may, at Company's own expense, use any employees or subcontractors as Company deems necessary to perform the services required of Company by this Agreement. City may not control, direct, or supervise Company's employees or subcontractors in the performance of those services.

3.4. Qualifications. Company represents that it is qualified and has the skills necessary to perform the services under this Agreement in a competent and professional manner, without the advice or direction of City.

3.5. Ownership Interest. Company will have no ownership interest in City.

3.6. No Benefit Contributions. Company shall have no obligation under this Agreement to compensate or pay applicable taxes or provide employee benefits of any kind to any person employed or retained by City.

3.7. Attorney-in-Fact. City appoints Company as City's attorney-in-fact for the following purposes, provided that Company shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever:

(a) Billing and Collections. To bill and collect ("Collections") all revenue earned by and due to City, in connection with City's provision of emergency services at the sites of MVA and other services, and to receive all Collections on City's behalf and to sue for and give satisfaction for monies due on account and to withdraw any claims, suits, or proceedings pertaining to or arising out of Company's or City's right to collect such amounts, provided that Company may not begin litigation against a person, entity, or insurance carrier without prior written approval by the City; and

(b) Endorsement. To take possession of and endorse in City's name any notes, checks, money orders, and any other instruments received as Collections, subject to Company's obligations herein.

ARTICLE 4
RESPONSIBILITIES OF COMPANY

4.1. Minimum Amount of Service. Company agrees to devote as much time and attention to the performance of the Company Services under this Agreement as is required to accomplish the tasks described herein to accomplish the results for which the Company is responsible under this Agreement.

4.2. Compliance with Applicable Law. Company shall comply in all respects with all applicable federal, state, and local laws, regulations, and ordinances in the performance of its obligations under this Agreement.

4.3. Non-Exclusive Relationship. Company may represent, perform services for, and contract with as many additional clients, persons, or companies as Company, in Company's sole discretion, sees fit.

4.4. Time and Place of Performing Work. Company may perform the services under this Agreement at any suitable time and location Company chooses.

4.5. Materials and Equipment. Company will supply all materials and equipment required to perform the services under this Agreement.

4.6. Workers' Compensation. Company agrees to provide workers' compensation insurance for Company and Company's employees and agents and agrees to hold harmless and indemnify City for any and all claims arising out of any injury, disability, or death of any of Company's employees or agents.

4.7. Assignment. Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Company without the prior written consent of City, which may be withheld in City's sole discretion.

4.8. Billing. Company shall bill the responsible party on City's behalf for services provided/rendered during MVAs, and other services, at the rates shown in Schedule "A", as such rates may be amended from time to time by City. Company may propose a change in rates at any time, but shall not implement any such change without City's consent. City may change the rates at any time without Company's consent, provided that the rates shall not fall below the amounts in Schedule "A". Company shall bill all claims provided to Company by City to the best of Company's ability.

4.9. Submission of Claims. Company shall provide entry of claims and submission to the responsible party or the responsible party's insurance carrier, and collections of monies deemed due to City.

4.10. Payment. Company shall remit to City 80% of the total monies collected on City's claims, and shall keep 20% of the total monies collected on City's claims as Company's sole compensation for Company's services. At no time shall Company have any right, title, or interest to more than 20% of the monies collected. Company shall pay all amounts owed to City

on a monthly or quarterly basis (as City may direct), within seven (7) working days after the close and accounting of the monthly (or quarterly) billing cycle.

4.11. Reports. Company shall provide monthly reports via e-mail or standard mail to City which detail billable claims submitted, but not yet completed, claims completed in the prior billing cycle, and claims not submitted.

ARTICLE 5 COMPENSATION OF COMPANY; RECORD MAINTENANCE AND AUDITS

5.1. Compensation for Company Services. Company hereby warrants that it will not provide Company Services to any customer or client in California in exchange for compensation which is less, on a percentage basis, than Company's compensation under this Agreement. To the extent that Company does provide Company Services to another customer or client in California for lower compensation, this Agreement shall be deemed amended to reflect such lower rate of compensation.

5.2. Company shall accurately maintain all records relating to the services provided hereunder including. Company shall maintain complete accounting records pertaining to billing and revenue ("Accounting Records") prepared on an accrual basis in accordance with generally accepted accounting principles for at least four (4) years. Company shall maintain the Accounting Records in a manner that allows for the separate identification of all revenues associated with providing services hereunder and such revenues shall not be combined, consolidated or in any other way incorporated with those of other operations conducted by Company in locations other than the City.

5.3. The City shall have the right, upon five business days advance notice, to inspect and/or audit Accounting Records, and other like materials of the Company that reasonably relate to Company's compliance with the provisions of this agreement. Such records shall be made available to City at Company's regular place of business, provided that if Company's regular place of business is outside the Counties of Placer, Sacramento, or Yolo, such records shall be made available at a location of City's choosing in Woodland. City shall initially bear the cost of such audit. If such audit discloses a material breach of this Agreement or an underpayment of the sums due to City under this Agreement in excess of five percent (5%) of the amount which should have been paid, Company shall promptly tender to City the amount of such underpayment, together with interest at the rate of twelve percent (12%) computed from the date of underpayment, and shall further reimburse City for the entirety of its audit costs, including, without limitation, auditor's costs and expenses, internal costs and expenses, and legal and other third party expenses. If such audit discloses an underpayment of less than five percent (5%), Company shall promptly repay such underpayment, together with interest at the rate of twelve percent (12%) computed from the date of underpayment, and City shall bear the costs of the audit. If an audit discloses an overpayment by Company, City shall promptly refund the overpayment without interest, or credit it without interest against sums owed by Company.

5.4 In addition to the foregoing, pursuant to California Government Code Section 8546.7, if Company's compensation under this Agreement exceeds ten thousand dollars

(\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

ARTICLE 6 OBLIGATIONS OF CITY

6.1. Cooperation of City. The City agrees to comply with all reasonable requests of Company and provide access to all documents reasonably necessary to the performance of Company's duties under this Agreement.

6.2. Assignment. Neither this Agreement nor any duties or obligations under this Agreement may be assigned by City without the prior written consent of Company, which consent shall not be unreasonably withheld.

ARTICLE 7 CITY AUTHORIZATION

7.1. Authorization. Notwithstanding other provisions of this Agreement, Company shall obtain authorization from City prior to performing any of the following:

- (a) The sale conveyance, transfer, pledge exchange, assignment, hypothecation, or encumbrance of City's interest in any sums owed to City; and
- (b) All other limitations as stated by the terms of this Agreement.

ARTICLE 8 TERMINATION OF AGREEMENT

8.1. Termination on Notice. Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party.

8.2. Termination on Occurrence of Stated Events. This Agreement will terminate, at the option of either party, on the occurrence of any of the following events:

- (a) Bankruptcy or insolvency of either party.
- (b) Assignment of this Agreement by either party without the consent of the other party.

8.3. Termination for Default. If either party defaults in the performance of this Agreement or materially breaches any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination will take effect immediately on receipt of notice by the breaching party or five (5) days after mailing of notice,

whichever occurs first. For the purposes of this paragraph, material breach of this Agreement includes, but is not limited to, the following:

(a) Company's failure to perform the services specified in the Description of Services.

(b) City's material breach of any representation, warranty or agreement contained in this Agreement.

(c) Company's material breach of any representation, warranty or agreement contained in this Agreement.

(d) City's yearly billable run volume is at or below six (6) runs.

8.4. The respective obligations of Company and City under Articles 4, 5, 6, 9 and 10 shall survive termination of this Agreement.

ARTICLE 9 PROPRIETARY RIGHTS

9.1. Confidential Information. Any written, printed, graphic, or electronically or magnetically recorded information furnished by City for Company's use are the sole property of City. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning the City's employees, products, services, prices, operations, and subsidiaries. Company will keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with the City's approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to Company's employees, agents, and subcontractors. On termination of this Agreement, Company will return any confidential information in Company's possession to City. Company shall comply with any and all applicable privacy requirements established by state or federal law or regulation.

ARTICLE 10 INDEMNIFICATION

10.1. Indemnification by Company. Company shall defend, with counsel acceptable to City, indemnify, and hold City harmless from any and all liability, losses, claims, and causes of action, including reasonable attorneys' fees, caused by or resulting from (i) the negligent or intentional acts or omissions of Company or any officer, director, agent, or employee thereof, or (ii) any breach of this Agreement by Company. The foregoing obligation of Company shall not apply when (1) the liability, loss, claim, or cause of action arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Company or its employees, subcontractors, or agents have contributed in no part to the liability, loss, claim, or cause of action. The duty of Company to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not

relieve Company from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10.2. Without limiting the generality of the foregoing, Company shall defend, indemnify, and hold harmless City and its officials, officers, employees, agents, and volunteers for any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of, resulting from, or based upon the assertion that any of the services provided by Company pursuant to this Agreement are not statutorily authorized or are otherwise unlawful.

ARTICLE 11 GENERAL PROVISIONS

11.1. Governing Law and Venue. This Agreement shall be governed in all respects by the laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction that would cause the application of the laws of any jurisdiction other than the State of California). Any action to interpret or enforce this Agreement shall be brought and maintained exclusively in the courts of and for Yolo County, California.

11.2. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understanding of the parties.

11.3. Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. No party may assign any of its rights or obligations hereunder without the express written consent of the other party hereto, which consent may be withheld in the other party's sole discretion; provided, however, any party may assign any and all of its rights and interests hereunder to one or more of its wholly-owned affiliates and designate one or more of its wholly-owned affiliates to perform its obligations hereunder; provided, however, that such party and the assignee shall be jointly and severally liable for full and total performance of its obligations hereunder.

11.4. Notices. Any notices authorized to be given hereunder shall be in writing and deemed given, if delivered personally or by overnight courier, on the date of delivery, if a Business Day, or if not a business day, on the first Business Day following delivery, or if mailed, three days after mailing by registered or certified mail, return receipt requested, and in each case, addressed, as follows:

If to the Company to:

Fire Recovery USA, LLC
219 Vernon Street
Roseville, CA 95678
Attention: Mike Rivera

with a copy to:

The Watkins Firm, APC
4520 Executive Drive, Suite 105
San Diego, California 92121
Attention: Chris Popov, Esq.

If to City to:

Woodland Fire Department
532 Court Street
Woodland, CA 95695
Attention: Fire Chief Tod Reddish

with a copy to:

Best Best & Krieger LLP
400 Capitol Mall, Suite 1650
Sacramento, CA 95814
Attention: Andrew Morris

or if delivered by telecopier, on a Business Day before 4:00 PM local time of addressee, on transmission confirmed electronically, or if at any other time or day on the first Business Day succeeding transmission confirmed electronically, to the facsimile numbers provided above, or to such other address or telecopy number as any party shall specify to the other, pursuant to the foregoing notice provisions. When used in this Agreement, the term "Business Day" shall mean a day other than a Saturday, Sunday or a day on which commercial banks in San Diego are generally closed for business.

11.5. Waiver; Amendments. This Agreement, including the attached schedules, (i) sets forth the entire agreement of the parties respecting the subject matter hereof, (ii) supersede any prior and contemporaneous understandings, agreements, or representations by or among the parties, written or oral, to the extent they related in any way to the subject matter hereof, and (iii) may not be amended orally, and no right or obligation of any party may be altered, except as expressly set forth in a writing signed by City and Company.

11.6. Counterparts. This Agreement may be signed in several counterparts.

11.7. Expenses. Each party shall bear its own expenses incurred with respect to the preparation of this Agreement and the consummation of the transactions contemplated hereby.

11.8. Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

11.9. Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so

adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

CITY:

COMPANY:

CITY OF WOODLAND

**FIRE RECOVERY USA, LLC.
a California limited liability company**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Attest:

Sue Vannucci, CMC

Approved as to Form:

Andrew Morris
City Attorney

SCHEDULE A

BILLING RATES

MOTOR VEHICLE ACCIDENTS

Level 1 - \$435.00

Scene Safety and Investigation (including traffic control, patient contact, hazard control). This will be the most common billing level. This occurs almost every time a Fire Department responds to an accident.

Level 2 - \$495.00

Includes Level 1 services as well as Cleanup and Material Used (Sorbents used, hazardous clean-up and disposal. This billing level will apply if the department has to clean up any gasoline or other automotive fluids that are spilled as a result of the accident.

Level 3 – CAR FIRE - \$605.00

Scene Safety, Fire Suppression, Breathing Air, Rescue Tools, Hand Tools, Hose, Tip Use, Foam, Structure Protection, and clean up gasoline or other automotive fluids that are spilled as a result of the accident.

Level 4 - \$1,800.00

Includes Level 1 & 2 services as well as Extrication (heavy rescue tools, ropes, airbags, cribbing etc.). This billing level will apply if the department has to free/remove anyone from the vehicle(s) using any equipment. This billing level will not apply if the patient is simply unconscious and the department is able to open the door to access the patient. This level is to be billed only if equipment is deployed.

Level 5 - \$2,100.00

Includes Levels 1, 2, & 3 services as well as preparation of a landing site for a medical helicopter (multi-engine company response, mutual aid, helicopter). We will bill at this level any time a helicopter is utilized to transport the patient(s).

HAZ-MAT

Level 1 - \$700.00

Basic Response - billing will include engine response, first response team, perimeter establishment, evacuations, first responder setup and command.

Level 2 - \$2,500.00

Intermediate Response - billing will include engine response, first response team, haz-mat certified team and appropriate equipment. Perimeter establishment, evacuations, first responder set up and command. Level A or B suit donning, breathing air and detection equipment. Set up and removal of decon center and wash down.

Level 3 – \$5,900.00 plus disposal fees (see below).

Advanced Response - billing will include engine response, first response team, haz-mat certified team and appropriate equipment. Perimeter establishment, evacuations, first responder set up and command. Level A or B suit donning, breathing air and detection equipment and robot deployment. Set up and removal of decon center and wash down. Detection, recovery and identification of material. Disposal and environment clean up. Includes above in addition to any disposal fees of material and contaminated equipment and material used at scene. Includes 3 hours of on scene time - **each additional hour @ \$300.00 per haz-mat team.**

BOMB SQUAD

Level 1 - \$700.00

Engine response with police department. first response team, perimeter establishment, evacuations, first responder set up and command. EMS command and security.

PIPELINE BREAKAGE / REPAIRS

(Includes, but not limited to: Gas, Sewer, Septic to Sewer, and Water Pipelines)

Level 1 - \$400.00

Basic Response - billing will include engine response, first response team, perimeter establishment, evacuations, first responder setup and command. Pipeline inspection without damage or breakage.

Level 2 - \$1,000.00

Intermediate Response - billing will include engine response, first response team, and appropriate equipment. Perimeter establishment, evacuations, first responder set up and command. May include haz-mat team, Level A or B suit doning, breathing air and detection equipment. Supervise and/or assist pipeline repair.

Level 3 – Itemized Billing Charges

Advanced Response - billing will include engine response, first response team, and appropriate equipment. Perimeter establishment, evacuations, first responder set up and command. May include haz-mat team, Level A or B suit doning, breathing air and detection equipment. Supervise and/or assist pipeline repair of intermediate to major pipeline damage. May include setup and removal of decon center and wash down. Detection, recovery and identification of material. Disposal and environment clean-up.

ARSON INVESTIGATION

Arson Response Team - \$275.00 per hour.

Includes:

- Scene Safety.
- Investigation.
- Source Identification.
- K-9/Arson Dog Unit.
- Identification Equipment.
- Mobile Detection Unit.
- Arson Report.

The billing begins when the arson investigator responds to the incident and is billed for logged time only including completion of the incident report.

STRUCTURE FIRES

Structure Fire Team - \$300.00 per hour, per engine.

Includes:

- Scene Safety.
- Investigation.
- Traffic Control.
- Patient Contact.
- Hazard Control.