

**PLACER COUNTY
OFFICE OF EMERGENCY SERVICES**

MEMORANDUM

TO: Honorable Board of Supervisors

FROM: Thomas M. Miller, County Executive Officer
By Rui Cunha, Assistant Director of Emergency Services

DATE: July 26, 2011

SUBJECT: Renewal of Board approved 2010 agreement with *Fire Recovery USA* for billing services to recoup Placer County Fire costs from at-fault, non-resident drivers insurance when involved in motor vehicle accidents in Placer County Fire area.

ACTION REQUESTED

That your Board:

- (1) Approve renewal for one year of the agreement with *Fire Recovery USA* that your Board approved in April, 2010 to now expire on June 30, 2012 for billing services to recoup Placer County Fire (PCF) costs from at-fault, non-resident drivers insurance when involved in motor vehicle accidents in Placer County Fire area; and
- (2) Approve automatic annual renewals of the agreement in the future subject to either party's written notification not to renew; and
- (3) Authorize the Placer County Purchasing Agent to sign the agreement on behalf of Placer County.

DISCUSSION

Background:

The services of *Fire Recovery USA* were engaged by the County in the July 1, 2010-June 30, 2011 agreement (Attached) in order to recoup costs incurred by PCF during responses to motor vehicle accidents within its response area. Recovery was only sought from the insurance policies of at-fault drivers who, as non-resident in the PCF response area, provided no direct financial support to PCF via property tax. The billing process has now been in effect for one year, and despite early implementation challenges, has recouped over \$15,000 in response costs with another \$7000 in outstanding billings for the PCF system.

Cost Recovery Summary:

Fire Recovery USA's administrative fee was 17% of revenues collected for the first six months of the (first) contract year raising to 20% in January, 2011. Currently, the administrative fee remains at 20% based on the collection rate for the preceding six months meeting or exceeding 65% as stipulated in the Agreement. Revenues collected have offset some response costs and were deposited in the Fire Control Fund and in several zones of benefit according to the location of the accident.

Automatic Renewals:

Staff has reviewed the cost recovery process and recommends that, due to its demonstrated effectiveness, the program be continued; however, annual renewal should be made automatic inasmuch as the agreement can be terminated by a letter from either party. The professionalism displayed by *Fire Recovery USA* and their agents' accessibility and cooperative nature were helpful and are positive signs going forward. The Office of Emergency Services retains oversight of the program and is tasked to review the program periodically and ensure its continued viability.

FISCAL IMPACT

There is no impact to the General Fund as a result of this action. Funds recouped in the Billing Process do offset operating deficiencies in both the Dry Creek and North Auburn Zones of Benefit.

Attachment

FY 2010-2011 Agreement (No. KN020957)
Amendment No.1 to Services Agreement No. KN020957

**SERVICES AGREEMENT
NO. KN020957**

AMENDMENT NO. 1

THIS SERVICES AGREEMENT, originally made effective as of July 1, 2010 ("Effective Date") through June 30, 2011 by and between FIRE RECOVERY USA LLC, a California limited liability company ("Company"), and PLACER COUNTY ("County:") is hereby amended as follows:

- The effective period of this contract is extended from July 1, 2011 to June 30, 2012.
- Section 8.1 is amended as follows:

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. Unless earlier terminated as set forth below, this Agreement shall be effective as of the date first set out above and shall continue for a period of one (1) year thereafter. This Agreement shall automatically renew for successive one (1) year periods, unless either party provides written notification to the other party of its decision not to renew this Agreement.

With the exception of the above noted items, all other provisions of this contract remain unchanged.

Executed as of the date indicated below:

COMPANY - FIRE RECOVERY USA, LLC
a California limited liability company

By: _____

Mike Rivera
Chief Business Development Officer

Date: _____

7/1/11

COUNTY OF PLACER:

By: _____

Clark Moots, Purchasing Agent

Date: _____

SERVICES AGREEMENT

KN020957

This Services Agreement (“Agreement”) is made effective as of July 1, 2010 (“Effective Date”) through June 30, 2011 by and between FIRE RECOVERY USA, LLC, a California limited liability company (“Company”), and PLACER COUNTY (“County”). Company and County are referred to herein individually as a “party” and collectively as “parties.”

RECITALS

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

WHEREAS, County seeks the services of Company to assist with the billing for services that Fire Department provides in connection with motor vehicle incidents and other emergency incidents; and

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

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 County agree as follows:

**ARTICLE 1
ENGAGEMENT**

1.1. **Engagement:** County hereby engages Company to provide the Company Services described in Article 4 herein, and County 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.

**ARTICLE 2
REPRESENTATIONS AND WARRANTIES**

2.1. **Representations and Warranties of Company:** Company hereby represents and warrants to County 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 County:** County hereby represents and warrants to Company that, at all times during the term of this Agreement, County has a separate agreement with CAL FIRE to act as the County Fire Department and CAL FIRE is a organized fire department established pursuant to the laws and ordinances 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 County 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 County to Company for services rendered under this Agreement. On request, Company will provide County with proof of timely payment. Company agrees to indemnify and defend County for any claims, costs, losses, fees, penalties, interest, or damages suffered by County 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. County 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 County.

3.5 Ownership Interest: Company will have no ownership interest in County.

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 County.

3.7 Attorney-in-Fact: County appoints Company as County's attorney-in-fact for billing for County's provision of emergency services provided/rendered at the sites of motor vehicle incidents and other emergency incidents and to withdraw any claims, suits, or proceedings pertaining to or arising out of Company's or County's right to collect such amounts.

ARTICLE 4 GENERAL 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 may be, in Company's sole discretion, required to accomplish the tasks described herein to accomplish the results for which the Company is responsible under this Agreement.

4.2 Company Services: Contractor agrees to perform the Company Services related to billing and collecting set forth in the "List of Company Services" attached hereto as Schedule "A" and incorporated herein by reference.

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 defend County 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 or have a change in control by Company without the prior written consent of County, which consent shall not be unreasonably withheld.

ARTICLE 5 COMPENSATION OF COMPANY

5.1 Compensation for Company Services: All Company Services provided pursuant to this Agreement will be provided in accordance with the terms, including compensation amounts and schedule of remittance, set forth in the "List of Company Services," attached hereto as Schedule A.

ARTICLE 6 OBLIGATIONS OF COUNTY

6.1 Cooperation of County: County 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 County without the prior written consent of Company, which consent shall not be unreasonably withheld.

ARTICLE 7 COUNTY AUTHORIZATION

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

- (a) The sale conveyance, transfer, pledge exchange, assignment, hypothecation, or encumbrance of County interest in any sums owed to County; 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 days (30) written notice to the other party. Unless earlier terminated as set forth below, this Agreement shall be effective as of the date first set out above and shall continue for a period of one (1) year thereafter.

8.2 Termination on Occurrence of Stated Events: This Agreement will terminate automatically on the occurrence of any of the following events;

- (a) Bankruptcy or insolvency of either party;
- (b) The assignment or change of control of this Agreement by either party without the consent of the other party; the parties agree that neither party will unreasonably withhold consent to such an assignment.

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 days (5) 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 complete the services specified in the Description of Services;
- (b) County'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) County's yearly billable run volume is at or below six (6) runs.

**ARTICLE 9
PROPRIETARY RIGHTS**

9.1 Confidential Information: Any written, printed, graphic, or electronically or magnetically recorded information furnished by County for Company's use are the sole property of County. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning the County'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 County 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 County.

**ARTICLE 10
HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

10.1 HOLD HARMLESS AND INDEMNIFICATION: Company hereby agrees to protect, defend, indemnify, and hold County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. Company agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Company. Company also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Company or the County or to enlarge in any way the Company's liability but is intended solely to provide for indemnification of County from liability for damages or injuries to third persons or property arising from Company's performance pursuant to this contract or agreement.

As used above, the term County means Placer County or its officers, agents, employees, and volunteers.

10.2 INSURANCE: Company shall file with County concurrently herewith a Certificate of Insurance, in companies acceptable to County, with a Best's Rating of no less than A-:VII showing.

10.3 WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE: Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to employees of Company under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer".

Company shall require all Subcontractors to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

10.4 GENERAL LIABILITY INSURANCE: Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Company,

providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for contractual liability insuring the obligations assumed by Company in this Agreement.

10.4.1 One of the following forms is required:

- (a) Comprehensive General Liability;
- (b) Commercial General Liability (Occurrence); or
- (c) Commercial General Liability (Claims Made).

10.4.2 If Company carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- (a) \$1,000,000 (One million dollars) each occurrence
- (b) \$2,000,000 (Two million dollars) aggregate

10.4.3 If Company carries a Commercial General Liability (Occurrence) policy:

- (a) The limits of liability shall not be less than:
 - \$1,000,000 (One million dollars) each occurrence (combined single limit for bodily injury and property damage)
 - \$1,000,000 (One million dollars) for Products-Completed Operations
 - \$2,000,000 (Two million dollars) General Aggregate
- (b) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be \$2,000,000 (Two million dollars).

10.4.4 Special Claims Made Policy Form Provisions:

Company shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

- (a) The limits of liability shall not be less than:
 - \$1,000,000 (One million dollars) each occurrence (combined single limit for bodily injury and property damage)
 - \$1,000,000 (One million dollars) aggregate for Products Completed Operations
 - \$2,000,000 (Two million dollars) General Aggregate
- (b) The insurance coverage provided by COMPANY shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

10.5. ENDORSEMENTS: Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- 10.5.1 "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of

this Agreement."

10.5.2 "The insurance provided by *Fire Recovery USA*, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."

10.5.3 "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer"

10.6 **AUTOMOBILE LIABILITY INSURANCE:** Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 (One million dollars) combined single limit for each occurrence. Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

10.7 **PROFESSIONAL LIABILITY INSURANCE (ERRORS & OMISSIONS):** Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than \$2,000,000 (Two million dollars).

If Company sub-contracts in support of Company work provided for in the agreement,

Professional Liability Insurance for Errors shall be provided by the sub contractor in an amount not less than \$2,000,000 (Two million dollars) in aggregate.

Insurance coverage provided by Company shall contain language providing coverage up to six (6) months following completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

ARTICLE 11

GENERAL PROVISIONS

11.1 **Governing Law:** 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).

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 not be unreasonably withheld; provided, however, any party may assign any and all of its rights and interests hereunder to one or more of its affiliates and designate one

or more of its affiliates to perform its obligations hereunder; provided, however, that such party remains 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 County to:

Placer County OES
Attention: Rui Cunha
2968 Richardson Drive
Auburn, CA 95603

with a copy to:

Placer County Risk Management
Attn: Maryellen Peters
145 Fulweiler Avenue
Auburn, CA 95603

Or, if delivered by telecopy, 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, and the Transaction Documents, (i) set 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 such party.

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.

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

COUNTY:

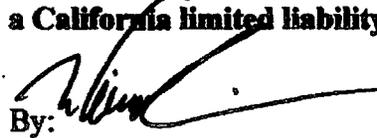
County of Placer

By: 

**Jim Boggan
Procurement Officer**

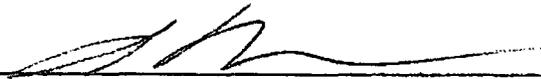
COMPANY:

**Fire Recovery USA, LLC.
a California limited liability co.**

By: 

**Michael Rivera
Chief Business Development Officer**

Approved as to Form - County Counsel

By: 

SCHEDULE A

LIST OF COMPANY SERVICES

1. Fire Recovery USA agrees to bill the responsible party on the County's behalf for services provided/rendered during motor vehicle incidents and other emergency incidents. The billing rates (user fees) are listed as EXHIBIT A, but may change over time, and can only change upon prior written agreement of the parties. Fire Recovery USA will provide notice to the County of changes in rates.
2. Fire Recovery USA will provide, as a normal matter of business: entry of claims, submission to the responsible party and reporting of progress.
3. Fire Recovery agrees to bill to the best of its ability all claims provided to Fire Recovery USA by the County.
4. Fire Recovery USA will not begin litigation against a person, entity, or insurance carrier without prior written approval by the Placer County Board of Supervisors.
5. Fire Recovery USA agrees to reimburse County 83% of the total monies collected on the County's claims for the first six (6) months, beginning on the date of first run submission. Every six (6) months thereafter, Fire Recovery USA agrees to provide County with an audit of its collection percentage from the preceding six (6) months. If the preceding six (6) months collection percentage is equal to or greater than 65%, then Fire Recovery USA will be entitled to retain an addition 3% per month on monies collected until the next six (6) month audit. If a six (6) month audit shows the collection percentage is less than 65%, then Fire Recovery USA will reimburse County a the original rate of 83% for the following six (6) months. The collection percentage will be based on "billable runs", defined as runs where the at-fault billable individual is a non-resident and has insurance coverage.
6. Fire Recovery USA agrees to pay these monies collected to the County on a monthly or quarterly basis (at the option of the County), within seven (7) working days after the close and accounting of the monthly (or quarterly) billing cycle.
7. Fire Recovery USA agrees to make available reports via a password protected website to the County which detail billable claims outstanding (which are claims submitted, but not yet completed) and claims completed in the prior billing cycle.

8. Fire Recovery USA will not be responsible for, nor accept any liability for, any erroneous, invalid, or illegal procedure codes or claims submitted to Fire Recovery USA by the Fire Department on the Run Sheets.