

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: June 20, 2011
Reviewed by: BP

SUBJECT: Emergency Medical Services billing services contract renewal

REPORT BY: Edward W. Tubbs, Fire Chief

STAFF RECOMMENDATION

That city council authorize the City Manager to renew the contract with the Novato Fire Protection District (NFPD) to continue to provide the Emergency Medical Service (EMS) billing services.

BACKGROUND

The City entered into a contract with the NFPD in 2008 as the City's EMS billing company. Prior to that the City had used another provider but changed in when we felt that the level of service fell short of expectations. As of this date I am not aware of any dissatisfaction with the level of service provided by the NFPD. In fact, it is quite the opposite.

DISCUSSION

The new proposal does have an increase in the percentage of fees charged from a current 4% of collections, to the new proposed 5.6% of collections. In conversations with NFPD, the increases are based on three years of actual experience with the payer mix and collections for Albany. The new rate is still highly competitive as research has shown other agencies charging 7 – 10%.

ANALYSIS

In searching for the best effective EMS billing services, it has become apparent that NFPD has developed a program that is highly effective for the City and at a feasible means. I have not found an agency that can compete with the proposed contract.

SUSTAINABILITY IMPACT

None

FINANCIAL IMPACT

The City could decide to use another billing company but so far none have been found at the proposed fee rate. Another alternative is that the City could perform the services. However, this is a very specialized business and it remains unclear if doing the collections in-house would cover the costs of having staff perform these duties as well as not having anyone already up to speed on this type of billing service.

Attachments

1. Joint Powers Agreement for Paramedic Ambulance Billing Services.

**JOINT POWERS AGREEMENT
FOR PARAMEDIC AMBULANCE BILLING SERVICES**

This Agreement is made and entered into this July 1, 2011, by and between the CITY OF ALBANY (hereinafter "CITY"), and the NOVATO FIRE PROTECTION DISTRICT (hereinafter "DISTRICT").

RECITALS

WHEREAS, DISTRICT, a fire protection district similar in size to the CITY's Fire Department, has established an Emergency Medical Services Billing Division and has been billing for its own paramedic/ambulance services during the past 6 years, as well as for other municipalities; has developed and maintains the expertise with respect to Medicare and Medicaid regulations and procedures necessary for the processing of such billings; and has been licensed to use and maintains technical software to process such billings; and

WHEREAS, CITY has historically provided ambulance services in connection with its Fire Department paramedic program to the residents of the City of Albany; and

WHEREAS, DISTRICT and CITY have the authority to enter into this Agreement for the provision of ambulance billing services pursuant to Health & Safety Code Sections 13861, 13862, 13878, 13898, 13918, and 13916(a), Public Contract Code Section 20811, Government Code Section 54981, and Government Code Section 6500 et seq.; and

WHEREAS, the CITY and the DISTRICT find it mutually beneficial to enter into this Agreement as a joint powers agreement pursuant to Government Code Section 6502.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. CITY. The City Manager shall be the representative of the CITY for all purposes under this Agreement. The City of Albany Fire Chief is hereby designated the PROJECT MANAGER for the CITY, and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT MANAGER for any reason; the CITY shall notify the DISTRICT within ten (10) business days of the substitution.

B. DISTRICT. The Fire Chief of the Novato Fire Protection District shall be the representative of the DISTRICT for all purposes under this Agreement. The Director of Emergency Medical Services for the DISTRICT is hereby designated as the PROJECT MANAGER for DISTRICT, and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement

require a substitute PROJECT MANAGER for any reason; the DISTRICT shall notify the CITY within ten (10) business days of the substitution.

2. DUTIES OF DISTRICT.

DISTRICT shall perform all services described in Exhibit "I" attached hereto and made a part hereof, in accordance with the terms and conditions stated herein.

3. DUTIES OF CITY.

CITY shall pay the compensation as provided in Paragraph 5, perform the duties specified in Exhibit "I", and maintain a Lock Box with CITY's bank (currently Mechanics Bank) to receive and account for the collections related to the billings provided hereunder.

4. ACCESS TO PATIENT MEDICAL RECORDS.

DISTRICT, as the authorized billing representative for the CITY's paramedic/ambulance services, is authorized by CITY to access the CITY's Patient Care Records provided to the Alameda County's Emergency Medical Services Management Information System, and other hospital records related to paramedic/ambulance services provided by CITY, in order to retrieve information needed to bill for such services, provided that DISTRICT shall maintain the confidentiality of such medical records as required by the California Confidentiality of Medical Information Act (Civil Code Section 56 et seq.) and the Health Insurance Portability and Accountability Act of 1996 (HTPAA).

5. COMPENSATION.

For the full performance of the services described herein by DISTRICT, CITY shall pay DISTRICT an amount equal to 5.6% of collections received by CITY. A check received by the CITY shall not be deemed a collection received if following deposit of the check with the CITY'S bank the CITY receives a Return Item notice from the bank. CITY shall make payment to DISTRICT in accordance with the provisions described in Exhibit "II," attached herein and made a part hereof.

6. TERM OF AGREEMENT.

The term of this Agreement shall be for three year(s) commencing on July 1, 2022 and ending June 30, 2024. Upon written agreement of the City Manager and DISTRICT Fire Chief, the term of this Agreement may be extended for additional three year periods, on the same terms and conditions as provided herein.

7. TERMINATION.

A. Discretionary. Either party may terminate this Agreement without cause upon sixty (60) days written notice mailed or personally delivered to the other party. A written notice shall be deemed served upon sending said notice in a postage paid envelope addressed to the other party to the Agreement and depositing the same with the United States Post Office with postage paid.

B. Cause. Either party may terminate this Agreement upon 30 days written notice to the other if the other party has failed to fulfill its obligations under this Agreement through no fault of the terminating party.

C. Effect of Termination. Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other, except that DISTRICT shall be entitled to compensation for services performed hereunder, through and including the date of termination, but not to exceed payment according to the rate specified in Paragraph 5 of this Agreement,

D. Return of Documents. Upon termination, any and all CITY documents or materials provided to DISTRICT and any and all of DISTRICT'S documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to CITY as soon as possible, but not later than thirty (30) days after termination. This does not include any documents relating to the software, equipment and software license that DISTRICT owns and will utilize in connection with the paramedic/ambulance billing services to be provided to CITY under this Agreement.

8. OWNERSHIP OF DOCUMENTS.

The written documents and materials prepared by the DISTRICT in connection with the performance of its duties under this Agreement shall be the sole property of CITY. CITY may use said property for any purpose, including projects not contemplated by this Agreement. This does not include any documents relating to the software, equipment and software license that DISTRICT owns and will utilize in connection with the paramedic/ambulance billing services to be provided to CITY under this Agreement.

9. INSPECTION AND AUDIT.

Upon reasonable notice, DISTRICT shall make available to CITY, or its agent, for inspection and audit, all documents and materials maintained by DISTRICT in connection with its performance of its duties under this Agreement. DISTRICT shall fully cooperate with CITY or its agent in any such audit or inspection.

10. ASSIGNABILITY.

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

11. INSURANCE.

A. During the term of this Agreement, DISTRICT shall maintain, at its own cost and expense, a general liability insurance policy with a combined single limit of at least \$500,000 for each occurrence or claim and a general aggregate limit of at least \$ 1,000,000.

B. DISTRICT shall provide CITY with policy endorsements for the foregoing insurance policy as follows:

1. The CITY, its officers, employees, agents and volunteers shall be named as additional insured's under the policy.

2. The CITY shall be given at least thirty (30) days written notice of any cancellation, termination or material modification of the terms of the insurance policy.

3. The insurance policy shall be primary with respect to any insurance or coverage maintained by CITY and shall not call upon CITY's insurance or coverage for any contribution.

C. The insurance shall be written on an occurrence basis, and shall be provided by an insured admitted to do business in California.

12. REPRESENTATION REGARDING PATENTS, COPYRIGHTS AND TRADE SECRETS.

DISTRICT hereby represents that it is the owner or licensee of any software, equipment and documents that it will utilize in connection with the paramedic/ambulance billing services to be provided to CITY under this Agreement, and agrees that at its own cost, risk and expense, shall defend any claim on behalf of CITY and its officers, employees, and agents and satisfy any judgment rendered against any of them with respect to infringement of patents, copyrights, trade secrets in connection with the paramedic/ambulance billing services provided by DISTRICT under this Agreement.

13. INDEMNIFICATION.

A. DISTRICT shall indemnify, release, defend and hold harmless CITY, its officers, agents, employees, and volunteers, against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorney's fees and administrative costs, arising out of or resulting in any way, in whole or in part, from any acts or omissions, intentional or negligent, of DISTRICT or DISTRICT's officers, agents and employees in the performance of their duties and obligations under this Agreement.

B. CITY shall indemnify, release, defend and hold harmless DISTRICT, its officers, agents, employees, and volunteers, against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorney's fees and administrative costs, arising out of or resulting in any way, in

whole or in part, from any acts or omissions, intentional or negligent, of CITY or CITY's officers, agents and employees in the performance of their duties and obligations under this Agreement.

14. NONDISCRIMINATION.

DISTRICT shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

15. COMPLIANCE WITH ALL LAWS.

DISTRICT shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. DISTRICT shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. DISTRICT shall release, defend, indemnify and hold harmless CITY, its officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations by the DISTRICT.

16. NO THIRD PARTY BENEFICIARIES.

CITY and DISTRICT do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

17. MISAPPROPRIATION OF COLLECTIONS.

DISTRICT shall regularly audit the reports received from CITY and the paramedic/ambulance billings provided by DISTRICT hereunder to assure that none of DISTRICT's employees aids, abets or engages in the conversion of any collections that have been billed by DISTRICT or should have been billed by DISTRICT for paramedic/ambulance services provided by CITY. In the event of participation by DISTRICT's employees in any such conversion of collections due to the CITY, DISTRICT shall be liable to CITY for such converted collections, together with interest thereon at the average rate of interest being earned by CITY on its investments during the quarter in which the conversion occurred.

18. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO CITY: Fire Chief
Albany Fire Department
1000 San Pablo Avenue, Albany, CA 94706

TO DISTRICT: Fire Chief
Novato Fire
Protection District
95 Rowland Way
Novato CA 94945

19. ENTIRE AGREEMENT -- AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the DISTRICT and the CITY.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the DISTRICT and the CITY.

E. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

20. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

21. APPLICABLE LAW.

The laws of the State of California shall govern this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

CITY OF ALBANY

NOVATO FIRE PROTECTION DISTRICT

Print Name: _____

Print Name: _____

ATTEST:

City Clerk