

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("AGREEMENT") is made and entered into this 1st day of January, 2019 by and between, City of Burlington ("**City**") 833 S. Spruce Street, Burlington, WA 98233 and Systems Design West, LLC a Delaware limited liability company having their principal place of business located at 19265 Powder Hill Place NE Poulsbo, Washington 98370 hereinafter referred to as the ("**Consultant**") Collectively the City and the Consultant shall be known as the "Parties".

RECITALS:

(a) WHEREAS, the City and the Consultant desire to enter into a "Professional Services Agreement",

(b) NOW, THEREFORE, in consideration for the mutual obligations contained herein the City and the Consultant, each intending to be legally bound by this Agreement, hereby mutually covenant and agree as follows:

1. SCOPE OF SERVICES. The Consultant shall provide to the City specific services related to the billing and payment processing of EMS patient transport services that are provided to the general public by the City. The following Scope of Services shall be incorporated into this Agreement as general services performed by the City and the Consultant under this Agreement.

1.1 The City, with assistance from Consultant, shall apply for Provider Status or Updated Status with Medicare, Medicaid, and all public and private insurances which will be billed as a part of this Scope of Services. The City shall assist the Consultant to obtain the necessary certifications, numbers and documentation needed for Consultant to provide the services identified in sections 1.2 and 1.3 below. The City agrees to furnish and assist the Consultant with the following:

(a) The City agrees to provide a complete and legible "PCR" (Patient Care Report) to the Consultant including patient name, address and pertinent billing and insurance information from the field, including a copy of the patient signature for authorization of benefits and responsibility for payment, authorizing billing of Medicare, Medicaid and any insurance the patient is a subscriber to. The original patient signature must be maintained by the City and made available to the Consultant and/or insurance payers upon request per Washington State Retention Schedule. The amounts to be billed will be determined by the City in the form of a resolution or ordinance to be incorporated into this Agreement as an attachment exhibit.

(b) The City agrees to furnish the Consultant with hospital ER forms (face/admit sheets) with demographic and insurance information attached to the PCR if requested by Consultant. Copies of any payments made directly to the City will be forwarded to the Consultant for accounting purposes in a timely manner. The City agrees to generate any refund checks due to overpayments identified by the Consultant directly to the payer to which the refund is due, based on detailed information provided by the Consultant. The City shall provide additional information as may be required by insurance companies or other agencies in order to facilitate the Consultant's obligations to the City.

(c) The City agrees to furnish to the Consultant to be made part of this Agreement as an attachment: resolutions pertaining to this Scope of Services; specific write off policies; collections procedures; rates and fees to be charged by the City and administered by Consultant as part of the Scope of Services performed under this Agreement.

1.2 Upon receipt of the PCRs and Batch Log from the City, the Consultant shall: set up a patient account in Consultant's proprietary software application and create a patient record; perform all billing operations including follow up statements and any necessary rebilling of EMS patient transport services provided by the City to the subscriber's medical insurances, Medicare, Medicaid and any and all known secondary insurance providers; produce and forward CMS 1500 forms and/or electronic medical claims per payer's rules and regulations within the legal boundaries of all federal and state laws; produce and mail an initial invoice and subsequent statements to all private patient accounts on behalf of the City; file any applicable appeals to insurance payers and/or Medicare and Medicaid on behalf of the patient if necessary to pursue the claim.

1.3 The Consultant shall: receive at its facilities all payments (except those directly deposited into the City's account by insurances and Medicare/Medicaid via EFT) Explanations of Benefits and Electronic Remittance Advices; account for all payments; deposit all funds directly into the City's "deposit only" account; forward deposit information to the City within 24 hours of such deposit; initiate and forward refund information and adjustments made on behalf of the patient's account to the City. The Consultant shall provide to the City a minimum of four (4) standard reports each month including: a) Aged Accounts Receivable b) Month End Summary c) Annual Collection Statistics d) Transaction Journal. These reports will include information related to amounts billed, amounts collected and uncollected, insurance and Medicare/Medicaid allowable and disallowable.

1.4 The Consultant shall provide live customer service to City's patients via toll free phone numbers to answer patient billing questions Monday through Friday from 8:00am through 6:00 pm, Pacific Standard Time (except Federal holidays).

1.5 The Consultant shall provide all labor, materials and equipment necessary to perform the work specified in the above scope of services.

2. FEES, EXPENSES, & PAYMENT. For and in consideration of the services provided by the Consultant identified above, the City shall pay to the Consultant an amount not to exceed **\$35.00** per transport for total volume of 1-10 transports per month OR **\$30.00** per transport for total volume of 11-20 transports per month, OR **\$25.00** per transport for total transport volume greater than 21 transports per month. In addition, the City will pay actual postage for patient invoices and statements and PCS requests per the Scope of Services performed under this Agreement. The City shall remit payment for services rendered under this Agreement to the Consultant within thirty (30) days from receipt of Consultant's monthly invoice to the City.

3. PAYMENT OF TAXES. The Consultant shall be liable for any and all federal, state, and local sales, excise taxes and assessments as a result of the payment for services rendered under this Agreement.

4. TERM OF AGREEMENT. The Consultant shall commence the work called for in this Agreement on the date of the Agreement and perform such work uninterrupted for a period of six (6) years. This Agreement will automatically renew upon the anniversary date for only one renewal period unless the Agreement is terminated by either Party. This Agreement may be amended upon the anniversary date by the Parties upon mutual agreement of terms and conditions with the acknowledgement of an amendment to the Professional Services Agreement to be signed by both Parties of this Agreement.

5. SCHEDULE OF ATTACHMENT EXHIBITS. The following attachments are acknowledged by the Parties and made part of this Agreement.

- # 1: Rates to be charged per transport [to be provided by the City]
- # 2: EMS Policies to be administered [to be provided by the City]
- # 3: State of Washington Records Storage Policy
- # 4: Systems Design Liability Insurance policies
- # 5: Business Associate Agreement

6. INDEPENDENT CONSULTANT STATUS. The Consultant performs this Agreement as an independent Consultant, not as an employee of City. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither method of computation of payment nor any other provision contained herein nor any acts of the Parties hereto, shall be deemed to create any relationship between the Parties hereto other than the relationship of City and an Independent Consultant. Any assistants, volunteers, or other help used by Consultant are and shall be deemed to be employees of Consultant and not employees of the City. Consultant shall be responsible for any payment due its employees, including workers compensation and related costs.

7. TERMINATION. Either Party may terminate this Agreement with a minimum of sixty (60) days' notice to the other Party. The Consultant shall upon termination by either Party provide sixty (60) days of follow up service to the outstanding patient accounts including posting payments, making deposits, and two (2) months of follow up reports to the City. Consultant shall deliver and document the return of all documentation in Consultants possession per the attached "Records Storage Agreement".

8. INSURANCE.

A. Insurance Term

The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

B. No Limitation

The Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Consultant shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
2. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
3. Professional Liability insurance appropriate to the Consultant's profession.

D. Minimum Amounts of Insurance

The Consultant shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
2. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

E. Other Insurance Provision

The Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage

The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

H. Notice of Cancellation

The Consultant shall provide the City with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business day's notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

J. Public Entity Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

9. END USER SOFTWARE LICENSE & CONFIDENTIAL INFORMATION. The term "CONFIDENTIAL INFORMATION AND SOFTWARE" shall mean: (i) any and all Information and proprietary software which is disclosed or provided by either Party ("OWNER OF THE INFORMATION") to the other ("RECIPIENT") verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary; and (ii) Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, employee information, and financial information, confidential information concerning City and Consultant's business or organization, as the parties have conducted it or as they may conduct it in the future. In addition, Confidential Information may include information concerning any of past, current, or possible future products or methods, including information about research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software).

9.1 TREATMENT OF CONFIDENTIAL INFORMATION. City's Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less restrictive than in this Section and who have a justified business "need to know". City shall protect the deliverables resulting from Services with the same degree of care. This agreement imposes no obligation upon the Parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from City; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the City and provided further that diligent efforts are undertaken to limit disclosure.

9.2 CONFIDENTIALITY AND DISCLOSURE OF PATIENT INFORMATION. Use and Disclosure of Protected Health Information. The Parties hereto agree that in order for the Consultant to perform its duties as expected by the City, it will be necessary for the Consultant to use and disclose Protected Health Information ("PHI"), as such term is defined at 45 CFR §164.501. The Parties of this Agreement further acknowledge and make part of this Agreement as an attachment to this Agreement a "Business Associate Agreement" to be maintained and updated whenever applicable by either Party of this Agreement.

9.3 PERMITTED AND REQUIRED USES AND DISCLOSURE OF PHI. The Parties hereto agree that the Consultant may use and disclose PHI in order to carry out any Payment function covered under the

definition of "Payment" contained in 45 CFR §164.501. The Parties hereto further agree that the Consultant may use or disclose PHI for any use or disclosure that is required by law.

10. INDEMNITY. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

11. SURVIVABILITY. The terms of Section 8 and 9 shall survive termination of this Agreement. If the Parties have executed a separate agreement that contains confidentiality terms prior to or contemporaneously with this Agreement, those separate confidentiality terms shall remain in full force to the extent they do not conflict. The "Business Associate Agreement" has terms incorporated to establish the continuance of covenants for the parties to disclose PHI for the continued operations of "Payment".

12. WARRANTIES AND REPRESENTATIONS. Each Party warrants that it has the right and power to enter into this Agreement and an authorized representative has executed this Agreement. Consultant warrants that the Services will be performed in a professional and workmanlike manner in accordance with recognized industry standards. To the extent Services provided by Consultant are advisory; no specific result is assured or guaranteed. Consultant EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED.

13. NOTICE. Any notice, demand, request, consent, approval, or other communication that either Party desires or is required to give to the other Party related to any of the content of this Agreement shall be presented in writing and served personally or sent by prepaid, first class mail to the addresses set forth below. Either Party may change its address by notifying the other Party of its change of address in writing.

City: City of Burlington
c/o Contract Administrator
833 S. Spruce Street
Burlington, WA 98233

Consultant: Systems Design West, LLC
19265 Powder Hill PI NE

Poulsbo, WA 98370

14. NONWAIVER. No modification to this Agreement nor any failure or delay in enforcing any term, exercising any option, or requiring performance shall be binding or construed as a waiver unless agreed to in writing by both Parties. No delay or omission of the right to exercise any power by either Party shall impair any such right or power, or be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or condition of this Agreement by either Party shall not be construed by the other Party as a waiver of a subsequent breach of the same covenant, term or condition.

15. APPLICABLE LAW. The laws of the State of Washington shall govern the construction, validity, performance and enforcement of this Agreement. Venue as to any action, claim, or proceeding arising out of, or based upon this Agreement, including, but not limited to, any action for declaratory or injunctive relief, shall be in Skagit County Superior Court, Skagit County Washington.

16. CONFLICT OF INTEREST. The Consultant covenants, warrants and represents that the Consultant or any employees of Consultant has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the subject matter or the performance of this Agreement. The Consultant further covenants, warrants and represents that in the performance of this Agreement, no person having any such interest shall be employed by the Consultant in the future.

17. ENTIRE AGREEMENT. This Agreement and any schedules, appendices, attachments and exhibits attached hereto sets forth all of the covenants, promises, agreements, conditions and understandings between the Parties hereto, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as herein otherwise expressly provided, no contemporaneous or subsequent agreement, understanding, alteration, amendment, change or addition to this Agreement, or any schedule, appendix, exhibit or attachment thereto shall be binding upon the Parties of this Agreement hereto unless reduced to writing and signed by both Parties. This Agreement constitutes a final, complete and exclusive statement of the Agreement between the Parties.

The Parties hereby agree to all of the above terms, conditions, covenants and have executed this Agreement by a duly authorized representative.

INTENTIONALLY BLANK, SIGNATURES NEXT PAGE

Dated this _____ day of _____, 2018.

Dated this _____ day of _____, 2018.

City of Burlington

Systems Design West, LLC
"Consultant"

By: _____

By: _____

Print: Steve Sexton

Print: Jennifer Braus

Title: Mayor

Title: CEO

Dated this _____ day of _____, 2018.

Attest:

Renee Sinclair, Budget & Acct. Director

Approved as to form:

Leif Johnson, City Attorney

Approved as to content:

Levon Yengoyan, Fire Chief

Business Associate Agreement Between the City of Burlington and Systems Design West, LLC

This Business Associate Agreement (“Agreement”) between the City of Burlington and Systems Design West, LLC is executed to ensure that Systems Design West, LLC will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of the City of Burlington in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended (“HIPAA”), and with the Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

A. General Provisions

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

B. Obligations of Business Associate

Systems Design West, LLC agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information (“e-PHI”) and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. Report to the City of Burlington any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to the City of Burlington without unreasonable delay but in no case later than 60 days after discovery of the breach;
4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Systems Design West, LLC agree to the same restrictions, conditions, and requirements that apply to Systems Design West, LLC with respect to such information;

5. Make PHI in a designated record set available to the City of Burlington and to an individual who has a right of access in a manner that satisfies the City of Burlington's obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by the City of Burlington, or take other measures necessary to satisfy the City of Burlington's obligations under 45 CFR §164.526;
7. Maintain and make available information required to provide an accounting of disclosures to the City of Burlington or an individual who has a right to an accounting within 60 days and as necessary to satisfy the City of Burlington's obligations under 45 CFR §164.528.
8. To the extent that Systems Design West, LLC is to carry out any of the City of Burlington's obligations under the HIPAA Privacy Rule, Systems Design West, LLC shall comply with the requirements of the Privacy Rule that apply to the City of Burlington when it carries out that obligation;
9. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Systems Design West, LLC on behalf of the City of Burlington, available to the Secretary of the Department of Health and Human Services for purposes of determining Systems Design West, LLC and the City of Burlington's compliance with HIPAA and the HITECH Act;
10. Restrict the use or disclosure of PHI if the City of Burlington notifies Systems Design West, LLC of any restriction on the use or disclosure of PHI that the City of Burlington has agreed to or is required to abide by under 45 CFR §164.522; and
11. If the City of Burlington is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Systems Design West, LLC agrees to assist the City of Burlington in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 CFR §681.2); (b) taking all steps necessary to comply with the policies and procedures of the City of Burlington's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of the City of Burlington agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting the City of Burlington of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to the City of Burlington of any threat of identity theft as a result of the incident.
12. Comply with all current rules and regulations pertaining to the OIG Compliance Program for ambulance suppliers and special bulletin regarding LEIE recommended screening of employees and any subcontractors.

C. Permitted Uses and Disclosures by Business Associate

The specific uses and disclosures of PHI that may be made by Systems Design West, LLC on behalf of the City of Burlington include:

1. The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by the City of Burlington to its patients;
2. Preparation of reminder notices and documents pertaining to collections of overdue accounts;
3. The submission of supporting documentation to carriers, insurers and other payers to substantiate the healthcare services provided by the City of Burlington to its patients or to appeal denials of payment for the same; and
4. Other uses or disclosures of PHI as permitted by HIPAA necessary to perform the services that Systems Design West, LLC has been engaged to perform on behalf of the City of Burlington.

D. Termination

1. The City of Burlington may terminate this Agreement if the City of Burlington determines that Systems Design West, LLC has violated a material term of this Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement if feasible.
3. Upon termination of this Agreement for any reason, Systems Design West, LLC shall return to the City of Burlington or destroy all PHI received from the City of Burlington, or created, maintained, or received by Systems Design West, LLC on behalf of the City of Burlington that Systems Design West, LLC still maintains in any form. Systems Design West, LLC shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this Agreement will extend to such PHI.

Agreed to this ____ day of _____, _____

Systems Design West, LLC

City of Burlington

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____