City of Marshall
Fire Department
P.O. Box 698
Marshall, Texas 75671
903-935-4580 / FAX 903-935-3568

REGINALD K. COOPER, EFO FIRE CHIEF

November 5, 2015

Marshall City Commission
Marshall City Manager
City of Marshall
601 S. Grove St.
Marshall, Texas 75670

Dear Commissioners and City Manager:

The Marshall Fire Department respectfully requests the acceptance of a contract with Fire Recovery USA to begin billing for service when we respond to HazMat spills, rescue calls involving extrication, motor vehicle accidents, and excessive false alarms. In July of this year, we received notification from Intermedix (Revenue Rescue), our previous billing agent, informing us of their intentions of discontinuing their fire, rescue and hazardous material billing operations thus terminating their service contract with our organization. We were notified of their intentions of ceasing the handling of any new billing claims effective September 1, 2015. Their agreement to continue processing our claims ends on December 31, 2015.

The Marshall Fire Department further requests the proposed Resolution which updates and reflects the related fee schedule for hazardous material, extrication rescue, motor vehicle accident, and excessive false alarm response calls made by our personnel.

The City Attorney has reviewed the proposed contract, made necessary changes and has received approval of any changes from Fire Recovery USA.

Chief Cooper, EFO

Marshall Fire Department

SERVICES AGREEMENT

This Services Agreement ("Agreement") is made effective as of _____, 2015 ("Effective Date"), by and between **FIRE RECOVERY USA, LLC,** a California limited liability company ("Company"), and **City of Marshall a Home Rule City in Texas**, ("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 services ("Company Services") for United States Fire Departments in connection with the motor vehicle incidents and other emergency incidents at which the City provides emergency services: and

WHEREAS, City seeks the services of Company to assist with the billing for services that City provides in connection with motor vehicle incidents and other emergency incidents; 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 Company Services described in Article 4 herein, and City 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 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.

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:

(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 provided/rendered at the sites of motor vehicle incidents and other emergency incidents, 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; 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.

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: Company agrees to perform the Company Services as set forth in the "List of Company Services" attached hereto as Schedule "A" and incorporated herein by reference; including those additional services requested by City and accepted in writing by the Company during the term of 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 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.

5.2. The provisions of Article 11 of this Agreement will govern any dispute associated with compensation.

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. The City shall be responsible for initially insuring, and continuing to review, local and state laws in the City's jurisdiction to assure adequate legal authority for Company to engage in the Services described herein on behalf of City.

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 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. 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.

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 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) 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 runs (6).

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.

9.2 Confidential Information: Any written, printed, graphic, electronically or magnetically recorded information, computer-based hardware, software, applications, software scripts, or software links furnished by Company for City's use are the sole property of Company. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning the Company's employees, products, services, prices, operations, and subsidiaries, to the extent allowed by law. City will keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with the Company's approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to City's employees, agents, and subcontractors. On termination of this Agreement, City will return any confidential information in City's possession to Company.

ARTICLE 10
INDEMNIFICATION

10.1. Indemnification: To the extent permitted by applicable law, the Company will indemnify and hold the City harmless from and against any and all loss, damage, liability, claims and/or injury resulting from all negligent actions performed by the Company, or its agents on the Company's behalf, in connection with this Agreement. However, this indemnification shall not apply with respect to any legal cause, action or consequential liability or losses as a result from inaccurate or incomplete information or unfounded or unreasonable submissions furnished to the Company by the City nor shall it apply to any act, omission or negligence of the City.

ARTICLE 11
GENERAL PROVISIONS

11.1. Governing Law: This Agreement shall be governed in all respects by the laws of the State of Texas, without giving effect to any choice or conflict of law provision or rule.

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:	with a copy to:
Fire Recovery USA, LLC 2271 Lava Ridge Court, Suite 120 Roseville CA 95661 Attention: Craig Nagler	The Watkins Firm, APC 4275 Executive Square, Suite 1020 La Jolla, CA 92037 Attention: Chris Popov, Esq.
If to City to: City of Marshall 601 South Grove Marshall, TX 75671 Attention: _____	with a copy to: _____ _____ _____ Attention: _____

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 Federal Holiday.

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.

11.8. Arbitration:

(a) If at any time there shall be a dispute arising out of or relating to any provision of this Agreement, any Transaction Document or any agreement contemplated hereby or thereby, such dispute shall be submitted for binding and final determination by arbitration in accordance with the regulations then obtaining of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) resulting from such arbitration shall be in writing, and shall be final and binding upon all involved parties. The site of any arbitration shall be at a site agreed to by the parties and the arbitration decision can be enforced in a "court of competent jurisdiction".

(b) This arbitration clause shall survive the termination of this Agreement, any Transaction Document and any agreement contemplated hereby or thereby.

11.9. Waiver of Jury Trial; Exemplary Damages: THE PARTIES HERETO HEREBY WAIVE THEIR RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING UNDER THIS AGREEMENT OR ANY TRANSACTION DOCUMENT.

11.10. 11.10 Cooperative Purchases: This Agreement may be used by other government agencies. Company has agreed to offer similar serves to other agencies under the same or similar terms and conditions as stated herein except that the revenue share percentage (Compensation) may be negotiated between the Company and other agencies based on the specific revenue expectations, agency reimbursed costs, and other agency requirements. The City/County/or City/Protection District will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of purchase by other agencies.

Signatures on following page:

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

COMPANY:

FIRE RECOVERY USA, LLC.
a California limited liability company

By: _____

Name: M. Craig Nagler

Title: Manager

CITY:

City of Marshall

By: _____

Name: _____

Title: City Manager

SCHEDULE A

LIST OF COMPANY SERVICES

1. Fire Recovery USA agrees to bill the responsible party on the City's behalf for services provided/rendered during motor vehicle incidents and other emergency incidents. The billing rates (mitigation fees) are listed as EXHIBIT A, but may change over time. City will provide notice to Fire Recovery USA of changes in billing rates.

2. Fire Recovery USA will provide, as a normal matter of business; entry of claims and submission to the responsible party, collections of monies deemed due to the City, payments of the agreed upon percentage of said monies to City, 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 City.

4. Fire Recovery USA will not begin litigation against a person, entity, or insurance carrier without prior written approval by the City.

5. Fire Recovery USA agrees to reimburse City a portion of the monies collected at a rate of 80 percent of the total monies collected on the City's claims.

6. Fire Recovery USA agrees to pay these monies collected to the City on a monthly basis, within seven (7) working days after the close and accounting of the monthly billing cycle.

7. Fire Recovery USA agrees to make available reports via a password protected website to the City 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 City on the Run Sheets.

EXHIBIT A

MITIGATION RATES

BASED ON PER HOUR

The mitigation rates below are average "billing levels", and are typical for the incident responses listed, however, when a claim is submitted, it will be itemized and based on the actual services provided.

MOTOR VEHICLE INCIDENTS

Level 1 - $435.00
Provide hazardous materials assessment and scene stabilization. This will be the most common "billing level". This occurs almost every time the fire department responds to an accident/incident.

Level 2 - $495.00
Includes Level 1 services as well as clean up and material used (sorbents) for hazardous fluid clean up and disposal. We will bill at this level if the fire department has to clean up any gasoline or other automotive fluids that are spilled as a result of the accident/incident.

Level 3 – CAR FIRE - $605.00
Provide 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/incident.

ADD-ON SERVICES:

Extrication - $1,305.00
Includes heavy rescue tools, ropes, airbags, cribbing etc. This charge will be added if the fire department has to free/remove anyone from the vehicle(s) using any equipment. We will not bill at this level if the patient is simply unconscious and fire department is able to open the door to access the patient. This level is to be billed only if equipment is deployed.

Creating a Landing Zone - $400.00
Includes Air Care (multi-engine company response, mutual aid, helicopter). We will bill at this level any time a helicopter landing zone is created and/or is utilized to transport the patient(s).

Itemized Response: You have the option to bill each incident as an independent event with custom mitigation rates, for each incident using, itemized rates deemed usual, customary and reasonable (UCR). These incidents will be billed, itemized per apparatus, per personnel, plus products and equipment used.

ADDITIONAL TIME ON-SCENE
Engine billed at $400 per hour.

Truck billed at $500 per hour.
Miscellaneous equipment billed at $300.

HAZMAT

Level 1 - $700.00
Basic Response: Claim will include engine response, first responder assignment, perimeter establishment, evacuations, set-up and command.

Level 2 - $2,500.00
Intermediate Response: Claim will include engine response, first responder assignment, hazmat certified team and appropriate equipment, perimeter establishment, evacuations, set-up and command, Level A or B suit donning, breathing air and detection equipment. Set-up and removal of decon center.

Level 3 – $5,900.00
Advanced Response: Claim will include engine response, first responder assignment, hazmat 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, detection equipment, recovery and identification of material. Disposal and environment clean up. Includes above in addition to any disposal rates of material and contaminated equipment and material used at scene. Includes 3 hours of on scene time - **each additional hour @ $300.00 per HAZMAT team.**

ADDITIONAL TIME ON-SCENE (for all levels of service)
Engine billed at $400 per hour.
Truck billed at $500 per hour.
Miscellaneous equipment billed at $300

FALSE ALARM BILLING RATES

(a) The first (1st) and second (2nd) false alarms within twelve (12) months in a calendar year is free of charge

(b) The third (3rd) false alarm in a twelve (12) month calendar year is billed at $150.00

(d) The fourth (4th) and subsequent false alarms in a twelve month (12) calendar year are billed at $200.00 per event, plus $50 for each false alarm after the fourth (4th).

FIRE INVESTIGATION
Fire Investigation Team - $275.00 per hour.
Includes:

- Scene Safety
- Investigation

• Source Identification
• K-9/Arson Dog Unit
• Identification Equipment
• Mobile Detection Unit
• Fire Report

The claim begins when the Fire Investigator responds to the incident and is billed for logged time only.

FIRES
Assignment - $400.00 per hour, per engine / $500.00 per hour, per truck

Includes:

• Scene Safety
• Investigation
• Fire / Hazard Control

This will be the most common "billing level". This occurs almost every time the fire department responds to an incident.

OPTIONAL: A fire department has the option to bill each fire as an independent event with custom mitigation rates.

Itemized, per person, at various pay levels and for itemized products use.

ILLEGAL FIRES
Assignment - $400.00 per hour, per engine / $500.00 per hour, per truck
When a fire is started by any person or persons that requires a fire department response during a time or season when fires are regulated or controlled by local or state rules, provisions or ordinances because of pollution or fire danger concerns, such person or persons will be liable for the fire department response at a cost not to exceed the actual expenses incurred by the fire department to respond and contain the fire. Similarly, if a fire is started where permits are required for such a fire and the permit was not obtained and the fire department is required to respond to contain the fire the responsible party will be liable for the response at a cost not to exceed the actual expenses incurred by the fire department. The actual expenses will include direct labor, equipment costs and any other costs that can be reasonably allocated to the cost of the response.

WATER INCIDENTS

Level 1
Basic Response: Claim will include engine response, first responder assignment, perimeter

establishment, evacuations, first responder set-up and command, scene safety and investigation (including possible patient contact, hazard control). This will be the most common "billing level". This occurs almost every time the fire department responds to a water incident.

Billed at $400 plus $50 per hour, per rescue person.

Level 2
Intermediate Response: Includes Level 1 services as well as clean up and material used (sorbents), minor hazardous clean up and disposal. We will bill at this level if the fire department has to clean up small amounts of gasoline or other fluids that are spilled as a result of the incident.

Billed at $800 plus $50 per hour, per rescue person.

Level 3
Advanced Response: Includes Level 1 and Level 2 services as well as D.A.R.T. activation, donning breathing apparatus and detection equipment. Set up and removal of decon center, detection equipment, recovery and identification of material. Disposal and environment clean up. Includes above in addition to any disposal rates of material and contaminated equipment and material used at scene.

Billed at $2,000 plus $50 per hour per rescue person, plus $100 per hour per HAZMAT team member.

Level 4
Itemized Response: You have the option to bill each incident as an independent event with custom mitigation rates for each incident using itemized rates deemed usual, customary and reasonable (UCR). These incidents will be billed, itemized, per trained rescue person, plus rescue products used.

BACK COUNTRY OR SPECIAL RESCUE
Itemized Response: Each incident will be billed with custom mitigation rates deemed usual, customary and reasonable (UCR). These incidents will be billed, itemized per apparatus per hour, per trained rescue person per hour, plus rescue products used.

Minimum billed $400 for the first response vehicle plus $50 per rescue person. Additional rates of $400 per hour per response vehicle and $50 per hour per rescue person.

CHIEF RESPONSE
This includes the set-up of Command, and providing direction of the incident. This could include operations, safety, and administration of the incident.

Billed at $250 per hour.

MISCELLANEOUS / ADDITIONAL TIME ON-SCENE
Engine billed at $400 per hour.
Truck billed at $500 per hour.
Miscellaneous equipment billed at $300.

MITIGATION RATE NOTES
The mitigation rates above are average "billing levels", and are typical for the incident responses listed, however, when a claim is submitted, it will be itemized and based on the actual services provided.

These average mitigation rates were determined by itemizing costs for a typical run (from the time a fire apparatus leaves the station until it returns to the station) and are based on the actual costs, using amortized schedules for apparatus (including useful life, equipment, repairs, and maintenance) and labor rates (an average department's "actual personnel expense" and not just a firefighter's basic wage). The actual personnel expense includes costs such as wages, retirement, benefits, workers comp, insurance, etc.

LATE FEES
If the invoice is not paid within 90 days, a Late Charge of 10% of the invoice, as well as 1.5% per month, as well as the actual cost of the collections, will be accessed to the responsible party.