



---

Date: April 21, 2010  
To: Honorable Mayor and City Councilmembers  
From: Oceanside Fire Department  
Subject: **ORDINANCE AUTHORIZING THE FIRE DEPARTMENT TO RECOVER EXPENSES ASSOCIATED WITH EMERGENCY RESPONSE SERVICES AND AGREEMENT FOR COST-RECOVERY SERVICES**

**SYNOPSIS**

Staff recommends that the City Council introduce an ordinance authorizing the Fire Department to recover from insurance companies costs associated with motor vehicle accident (MVA) response and fire rescue services. The ordinance limits the cost recovery for these services to only responsible parties living outside the City of Oceanside and their insurance carriers.

Staff also recommends that the City Council approve a two-year professional services agreement with Cost Recovery USA, Inc., of Roseville, California, for billing and collection costs related to MVAs and fire rescue services, with compensation to Cost Recovery USA in an amount not to exceed 20 percent of costs recovered; and authorize the City Manager to execute the agreement.

**BACKGROUND**

Current policies, codes and the attached ordinance will allow the Fire Department to pursue cost-recovery for services under circumstances such as: motor vehicle accidents, incidents where the driver is determined to be driving under the Influence (DUI), significant release of hazardous materials and significant fires that are determined to be caused by negligence (non-resident).

Most, if not all, automobile and homeowners insurance companies have provisions in their policies covering payment to fire departments for emergency response and service provided at vehicle accidents and other fire/rescue events. The trend in our area (county) and throughout the country is to bill insurance carriers directly for these services. Even though it is permissible to bill all involved parties, the proposed ordinance specifically targets billing for MVA services to involved parties who live outside the City of Oceanside, for fire/rescue activities conducted by the Oceanside Fire Department, and further specifies that billing be directed to insurance carriers only, with no direct billing to involved parties.

Current emergency responses to non-resident incidents are subsidized by Oceanside taxpayers.

Several vendors have been identified that specialize in this type of billing and the recovery of costs associated with emergency response services. With the adoption of this ordinance the Fire Department will "piggy-back" on an awarded contract between the City of Roseville, California, and Fire Recovery USA. The City of Roseville issued an RFP and obtained bids from a minimum of three vendors, a process which mirrored the City of Oceanside RFP process. Fire Recovery USA is endorsed by the International Association of Fire Chiefs.

The attached fee schedule was prepared utilizing current salary tables, equipment costs and average times typically associated with these types of events. The schedule will be evaluated each year and adjusted appropriately. Data will be collected by fire personnel at the time of incidents and submitted to the approved vendor for billing.

**ANALYSIS**

Funds for the repair and replacement of all "firefighting equipment and apparatus" come exclusively from the Fire Department Budget. Seeking reimbursement from insurance companies for the wear and tear on equipment, and replacement where warranted, would be additional funding to be applied to a Fire Department Business Unit for cost-recovery revenue. These funds would then be expended on repairs and replacement of firefighting tools, equipment and staff time.

**FISCAL IMPACT**

While guarantees for revenue recovery cannot be made, an estimated forecast, based on calls for service in 2009, would have netted the Oceanside Fire Department \$266,203 to the Prevention Business Unit (See attachment A). This estimate was developed with a very conservative approach and it is likely we will outperform the estimate. Recovered monies will be deposited into (550551101.4461).

**CITY ATTORNEY'S ANALYSIS**

The requirements for passage of a revenue measure vary depending on the nature of the charge. As defined by Proposition 218, a "special tax," is a tax imposed for specific purposes, which is placed into a general fund, and requires 2/3 voter approval. Special assessments, development fees, regulatory fees and user fees are not considered special taxes. Regulatory fees may be imposed under a city's police power and are designed to regulate conduct; user fees are charged only to the person actually using the service. These fees are not considered special taxes as long as they bear a reasonable relation to the benefits and costs associated with the service and benefit a discrete group, as opposed to the public as a whole.

Generally, absent authorizing legislation, costs of providing protection from fire or safety hazards are not recoverable from parties responsible for the incident response. Certain California statutes provide such authorizing legislation with respect to specified types of conduct. For example, Vehicle Code section 17300 allows recovery from the

responsible party for the costs incurred in responding to motor vehicle accidents, including debris removal, traffic control and hazardous waste cleanup. Health & Safety Code section 13009 provides that a person who negligently sets a fire or allows a fire to be set is liable for the fire suppression costs incurred to fight the fire and for the cost of providing rescue or emergency medical services. Similarly, Government Code section 53150 authorizes the recovery of emergency response costs from persons whose intentionally wrongful conduct, or whose negligent operation of a motor vehicle while under the influence of drugs or alcohol, causes an incident requiring an emergency response. Although no state statute specifically authorizes recovery of emergency response costs related to motor vehicle accidents not caused by intentional wrongful conduct or driving under the influence, no state statute specifically prohibits such recovery by local agencies. Moreover, the express legislative intent of the DUI cost recovery statute is to "supplement and ... not supplant" other cost recovery remedies available to public agencies. To date, no California court has opined on the validity of any emergency services cost recovery measure.

**RECOMMENDATION**

Staff recommends that the City Council introduce the ordinance authorizing the Fire Department to recover from insurance companies costs associated with motor vehicle accident (MVA) response and fire rescue services; and approve the two-year professional services agreement with Cost Recovery USA, Inc., of Roseville, California, for billing and collection costs related to MVAs and fire rescue services, with compensation to Cost Recovery USA in an amount not to exceed 20 percent of costs recovered; and authorize the City Manager to execute the agreement.

PREPARED BY:

  
\_\_\_\_\_  
Darryl Hebert  
Acting Fire Chief

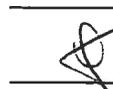
SUBMITTED BY:

  
\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Teri Ferro, Financial Services Director

\_\_\_\_\_  
  
\_\_\_\_\_

Attachment: A Ordinance

Attachment: B Professional Services Agreement



1           WHEREAS, in recognition of the foregoing, the City Council wishes to provide for the  
2 establishment of mitigation fees to be charged to non-resident persons responsible for motor  
3 vehicle accidents and other incidents requiring a response by Oceanside Fire Department  
4 personnel, not to exceed the City's actual costs of providing such responses.

5           NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

6           SECTION 1. The City of Oceanside may impose and collect mitigation fees for services  
7 provided by the Oceanside Fire Department in responding to the scene of motor vehicle  
8 accidents and other emergency incidents, as listed in Exhibit A, attached hereto. The rate of  
9 said mitigation fees shall be based on usual, customary and reasonable costs of the services  
10 provided. The fees shall not exceed the City's actual costs of providing the services for which  
11 the fees are imposed. The fee schedule attached as Exhibit A shall be reviewed annually and  
12 may be adjusted by resolution of the Oceanside City Council, as appropriate, to reflect current  
13 actual costs.

14           SECTION 2. Applicable mitigation fees shall be recoverable from the responsible party,  
15 representing an add-on cost of the claim for injuries and/or damage to vehicles and property.  
16 The claim costs shall be billed to the insurance carrier or carriers providing insurance coverage  
17 for the incident. The City may contract with a third-party service provider for the billing and/or  
18 collection of such fees. All revenue collected from such fees shall be placed in the City's  
19 General Fund and may be used for any lawful purpose.

20           SECTION 3. The mitigation fees authorized by this Ordinance shall be collected only  
21 from persons not residing within the City of Oceanside and from their insurers.

22           SECTION 4. Severability. If any section, sentence, clause or phrase of this Ordinance is  
23 for any reason held to be invalid or unconstitutional by a decision of any court of competent  
24 jurisdiction, such decision shall not affect the validity of the remaining portions of this  
25 Ordinance. The City Council hereby declares that it would have passed and adopted this  
26 Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any  
27 one or more sections, subsections, sentences, clauses or phrases be declared invalid or  
28 unconstitutional.

1 SECTION 5. The City Clerk of the City of Oceanside is hereby directed to publish this  
2 ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)  
3 days after its passage in the North County Times, a newspaper of general circulation published  
4 in the City of Oceanside.

5 SECTION 6. This ordinance shall take effect and be in force on the thirtieth (30<sup>th</sup>) day  
6 from and after its final passage.

7 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,  
8 California, held on the \_\_\_ day of \_\_\_\_\_, 2010 and, thereafter,

9 PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
10 Oceanside California, held on the \_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

11 AYES:

12 NAYS:

13 ABSENT:

14 ABSTAIN:

15 MAYOR OF THE CITY OF OCEANSIDE

16  
17 ATTEST:

APPROVED AS TO FORM:

18  
19 \_\_\_\_\_  
CITY CLERK

20  
21  
22  
23  
24  
25  
26  
27  
28  
  
CITY ATTORNEY

## **EXHIBIT A**

### **MITIGATION FEES BASED ON PER HOUR**

#### **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 a 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.

##### **Level 4 - \$1,800.00**

Includes Level 1 & 2 services as well as extrication (heavy rescue tools, ropes, airbags, cribbing etc.). We will bill at this level 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.

##### **Level 5 - \$2,200.00**

Includes Levels 1, 2, & 4 services as well as Air Care (multi-engine company response, mutual aid, helicopter). We will bill at this level any time a helicopter is utilized to transport the patient(s).

##### **Level 6**

**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.

## **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 fees 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.**

## **PIPELINE INCIDENTS / POWER LINE INCIDENTS**

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

### **Level 1 - \$400.00**

**Basic Response:** Claim will include engine response and first responder assignment, perimeter establishment, evacuations, first responder set-up and command. Includes inspection without damage or breakage.

### **Level 2 - \$1,000.00**

**Intermediate Response:** Claim will include engine response, first responder assignment, and appropriate equipment, perimeter establishment, evacuations, first responder set-up and command. May include HAZMAT team, Level A or B

suit donning, breathing air and detection equipment. Supervise and/or assist pipeline repair.

### **Level 3 – Itemized Claim Charges**

**Advanced Response:** Claim will include engine response, first responder assignment, and appropriate equipment, perimeter establishment, evacuations, first responder set-up and command. May include HAZMAT team, Level A or B suit donning, breathing air and detection equipment. Supervise and/or assist pipeline repair of intermediate to major pipeline damage. May include set-up and removal of decon center, detection, recovery and identification of material. Disposal and environment clean up.

### **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 a 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.**

## **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 a 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 fees 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**

**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.

## SERVICES AGREEMENT

This Services Agreement (“Agreement”) is made effective as of \_\_\_\_\_, 2010 (“Effective Date”), by and between **FIRE RECOVERY USA, LLC.**, a California limited liability company (“Company”), and the City of Oceanside through the Oceanside Fire Department (“Fire Department”). The Company and the City are referred to herein individually as a “party” and collectively as the “parties.”

### RECITALS

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

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

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

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 Fire Department agree as follows:

### ARTICLE 1 ENGAGEMENT

1.1. Engagement. Fire Department hereby engages Company to provide the Company Services described in Article 4 herein, and Fire Department 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 Fire Department 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 Fire Department. Fire Department hereby represents and warrants to Company that, at all times during the term of this Agreement, Fire Department is a California general law city with a municipal fire department and organized fire

fighting unit established pursuant to the laws of the state of California in which Fire Department is located.

### **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 Fire Department 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 Fire Department to Company for services rendered under this Agreement. On request, Company will provide Fire Department with proof of timely payment. Company agrees to indemnify Fire Department for any claims, costs, losses, fees, penalties, interest, or damages suffered by Fire Department 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. Fire Department 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 Fire Department.

3.5. Ownership Interest. Company will have no ownership interest in Fire Department.

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 Fire Department.

3.7. Attorney-in-Fact. Fire Department appoints Company as Fire Department's attorney-in-fact for the following purposes:

- (a) Billing and Collections. To bill and collect ("Collections") all revenue earned by and due to Fire Department, in connection with Fire Department's provision of emergency services at the sites of MVA and other services, and to receive all Collections on Fire Department'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 Fire Department's right to collect such amounts; and

- (b) Endorsement. To take possession of and endorse in Fire Department'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. Contractor agrees to perform the Company Services related to billing and collections 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 indemnify Fire Department 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 Fire Department, 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 FIRE DEPARTMENT**

6.1. Cooperation of Fire Department. The Fire Department 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 Fire Department without the prior written consent of Company, which consent shall not be unreasonably withheld.

**ARTICLE 7**  
**FIRE DEPARTMENT AUTHORIZATION**

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

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

**ARTICLE 8**  
**TERMINATION OF AGREEMENT**

8.1. Termination on Notice. Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. 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 two (2) years with Fire Departments option to renew for two additional two (2) year periods.

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) 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 (5) days after mailing of notice, whichever occurs first. For the purposes of this paragraph, material breach of this Agreement includes, but is not limited to, the following:

- (a) Company's failure to complete the services specified in the Description of Services.
- (b) Fire Department'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) Fire Department'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 Fire Department for Company's use are the sole property of Fire Department. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning the Fire Department'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 Fire Department'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 Fire Department.

## **ARTICLE 10 INDEMNIFICATION AND INSURANCE REQUIREMENTS**

10.1. **COMPANY'S INDEMNIFICATION OF CITY**. COMPANY shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or properties arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the COMPANY, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising out of willful misconduct, sole negligence or active negligence of the CITY, its officers, agents or employees. In addition, COMPANY shall defend and indemnify the CITY against all challenges to CITY of OCEANSIDE Ordinance # \_\_\_\_\_, adopted \_\_\_\_\_, 2010. COMPANY'S indemnification shall include any and all costs, expenses, attorney's fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, COMPANY at its own expense shall, upon written request by the CITY, defend any such suit or action brought

against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the COMPANY.

10.2 Insurance. COMPANY agrees to continuously maintain, in full force and effect, the following policies of insurance during the term of this Agreement.

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workers Compensation	Statutory
Commercial General Liability	Bodily Injury: \$1,000,000 each occurrence \$2,000,000 aggregate Property Damage: \$1,000,000 each occurrence Personal Injury: \$1,000,000 each occurrence \$2,000,000 aggregate
Automobile Liability including endorsements for owned, hired and non-owned vehicles	Bodily Injury: \$500,000 each occurrence \$1,000,000 aggregate Property Damage: \$100,000 each occurrence

COMPANY shall submit a certificate evidencing such coverage in a form satisfactory to the City Attorney of CITY, prior to undertaking any work hereunder. COMPANY shall also provide a separate endorsement form showing CITY, its officers, agents and employees as additional named insureds for each type of coverage, except for Workers' Compensation and Professional Liability. Such insurance shall specifically cover the contractual liability of COMPANY. The coverage shall be primary as to such additional insureds and no coverage of the CITY shall be called upon to contribute to a loss. Said certificates shall provide for at least thirty (30) days written notice to CITY prior to cancellation or modification of any insurance required by this Agreement. COMPANY shall furnish a certificate for the period covered by this Agreement. Any insurance written on a claim's made basis is subject to the approval of the City Attorney. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve COMPANY of liability in excess of such coverage, nor shall it preclude CITY from taking such other actions as are available to it under any other provisions of this Agreement or law.

**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 Fire Department to:

Oceanside Fire Department  
300 North Coast Hwy  
Oceanside, CA 92054

with a copy to:

Oceanside City Attorney  
300 North Coast Hwy  
Oceanside, CA 92054

Attention: Fire Chief

Attention: City Attorney

or if delivered by telecopier, on a Business Day before 4:00 PM local time of addressee, on transmission confirmed electronically, or if at any other time or day on the first Business Day succeeding transmission confirmed electronically, to the facsimile numbers provided above, or to such other address or telecopy number as any party shall specify to the other, pursuant to the

11.5. Amendments. This Agreement 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.

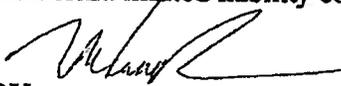
11.7 Expenses. Each party shall bear its own expenses incurred with respect to the preparation of this Agreement and the consummation of the transactions contemplated hereby.

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

CITY OF OCEANSIDE, a  
municipal corporation

FIRE RECOVERY USA, LLC, a  
California limited liability company

BY: \_\_\_\_\_  
Peter Weiss  
City Manager

  
BY: \_\_\_\_\_  
Michael Rivera  
its: Chief Business Dev. Officer

ATTEST:

BY: \_\_\_\_\_  
Barbara Reigel Wayne  
City Clerk

APPROVED AS TO FORM:

BY:  ASST.  
for John Mullen  
City Attorney

## **SCHEDULE A**

### **LIST OF COMPANY SERVICES**

1. Fire Recovery agrees to bill the responsible party on the Fire Department's behalf for services provided/rendered during MVAs (Motor Vehicle Accidents) and other services. The current rates are listed below, but may change over time. Fire Recovery will provide notice to Fire Department of changes in rates.
2. Fire Recovery will provide, as a normal matter of business; entry of claims and submission to the responsible party, collections of monies deemed due to the Fire Department, payments of the agreed upon percentage of said monies to Fire Department, and reporting of progress.
3. Fire Recovery agrees to bill to the best of its ability all claims provided to Fire Recovery by the Fire Department.
4. Fire Recovery will not begin litigation against a person, entity, or insurance carrier without prior written approval by the Fire Department.
5. Fire Recovery agrees to reimburse Fire Department for a portion of the monies collected at a rate of 83% of the total monies collected on the Fire Department's claims for the first six (6) months. Every six (6) months Fire recovery agrees to provide Fire Department with an audit of its collection percentage from the preceding six (6) months. If the preceding six (6) months collection percentage is more than 65%, then Fire Recovery 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 drops below 65%, then Fire Recovery will reimburse Fire Department at 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 agrees to pay these monies collected to the Fire Department on a monthly basis, within seven (7) working days after the close and accounting of the monthly billing cycle.
7. Fire Recovery agrees to provide monthly reports via e-mail or standard mail to the Fire Department which detail billable claims outstanding (which are claims submitted, but not yet completed) and claims completed in the prior billing cycle.
8. Fire Recovery will not be responsible for, nor accept any liability for, any erroneous, invalid, or illegal procedure codes or claims submitted to Fire Recovery by the Fire Department on the Run Sheets.

**ALL-PURPOSE ACKNOWLEDGMENT**

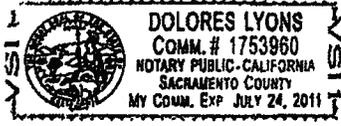
State of California

County of Sacramento } ss.

On 4-14-2010, before me, Dolores Lyons, Notary Public,

personally appeared Michael Rivera, who proved to me on the

basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Dolores Lyons  
NOTARY'S SIGNATURE

PLACE NOTARY SEAL IN ABOVE SPACE

**OPTIONAL INFORMATION**

The information below is optional. However, it may prove valuable and could prevent fraudulent attachment of this form to an unauthorized document.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

- INDIVIDUAL
- CORPORATE OFFICER \_\_\_\_\_ TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

\_\_\_\_\_ TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_ NUMBER OF PAGES

\_\_\_\_\_ DATE OF DOCUMENT

\_\_\_\_\_ OTHER

**SIGNER (PRINCIPAL) IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

\_\_\_\_\_  
\_\_\_\_\_

RIGHT  
THUMBPRINT  
OF  
SIGNER

