

Resolution No. R-13-15

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
KURTZ PARAMEDIC SERVICE, INC.
FOR PARAMEDIC AND AMBULANCE BILLING SERVICES**

WHEREAS, the City of Wheaton, Illinois ("City") is an Illinois Home Rule Municipality pursuant to provisions of Article VII, Section 6, of the Illinois Constitution of 1970, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this resolution pertains to the government and affairs of the City and its residents; and

WHEREAS, the City reviewed responses to the City's Request for Proposals from three potential vendors who provide paramedic services and five potential vendors who provide ambulance billing services; and

WHEREAS, the City narrowed its analysis to two vendors, Kurtz Paramedic Service, Inc. and Metro Paramedic Services, Inc., and due to the quality and competitiveness of the proposals received from these two vendors a Best and Final Offer was sought; and

WHEREAS, both Kurtz Paramedic Service, Inc. and Metro Paramedic Services, Inc. submitted a Best and Final Offer; and

WHEREAS, the City identified that the Metro Paramedic Services, Inc. Best and Final Offer did not meet minimum specifications set forth in the Request for Proposal documents; and

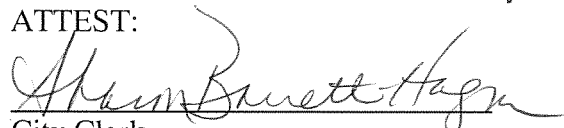
WHEREAS, the City has determined it to be in its best interests and its residents, to enter into an Agreement with Kurtz Paramedic Service, Inc., to provide paramedic and ambulance billing services.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign and the City Clerk is authorized to attest to an Agreement between the City of Wheaton and Kurtz Paramedic Service, Inc.

ADOPTED this 13th day of April, 2015.


Mayor

ATTEST:


City Clerk

Ayes:

Roll Call Vote:

Councilman Suess

Councilwoman Corry

Councilman Prendiville

Councilman Rutledge
Mayor Gresk
Councilman Saline
Councilman Scalzo

Nays: None
Absent: None

Motion Carried Unanimously

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**PARAMEDIC SERVICES AND
AMBULANCE BILLING SERVICES AGREEMENT**

**Between Kurtz Paramedic Service, Inc.
and
City of Wheaton**

37 This Agreement made and entered into this 14th day of April, 2015
38 _____ by and between Kurtz Paramedic Service, Inc., an Illinois Corporation, (hereafter referred
39 to as "Contractor"), and the City of Wheaton , a Home Rule Unit of Local Government (hereafter
40 referred to as "City").

41
42 **WHEREAS**, the City seeks to provide Paramedic Services and Ambulance Billing
43 Services in order to preserve, protect and promote the public health, safety and welfare; and
44

45 **WHEREAS**, the Contractor is in the business of furnishing EMT-Paramedic personnel
46 and Ambulance Billing services for Paramedic Services through its subcontractor Andres; and
47

48 **WHEREAS**, the City requested proposals for the work, materials, and services necessary
49 to perform the services and complete all the work as specified in Exhibits A-1 and A-2; and
50

51 **WHEREAS**, the City has determined that it is appropriate to hire a Contractor to
52 provide labor, and/or materials and/or equipment to perform Paramedic Services as more
53 fully recited in the Request for Proposal issued November 2014, which is incorporated herein as
54 Exhibit A-1; and
55

56 **WHEREAS**, the City has determined that it is appropriate to hire a Contractor to
57 perform Ambulance Billing Services as more fully recited in the Request for Proposal issued
58 November 2014, which is incorporated herein as Exhibit A-2; and
59

60 **WHEREAS**, the Contractor submitted proposals to the City for the Work specified, one
61 of which was identified as the "Best and Final Offer, Option #1" and is attached hereto and
62 incorporated herein as Exhibit B including Exhibits B-1, B-2 and B-3; and
63

64 **WHEREAS**, these combined services as referred to in Exhibits A-1 and A-2 and further
65 clarified by Exhibit B, are referred to herein as the "Work"; and
66

67 **WHEREAS**, on the 18th day of April 2015, the City selected the
68 Contractor for the Work specified in this Agreement and Exhibits.
69

70 **NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual
71 covenants and promises hereinafter set forth, the parties hereto have agreed and do hereby agree
72 as follows:
73

74 **ARTICLE 1: SCOPE OF SERVICES**

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76 The Recital paragraphs are incorporated herein as substantive terms and conditions of this
77 Agreement and as representing the intent of the Parties. Any inconsistency between the Work as
78 stated by the City and the work as proposed by the Contractor in Exhibit B shall be controlled by
79 the Work as stated by the City. The Work "as stated by the City" shall be that described in: this
80 Agreement including the City's Request for Proposal ("RFP"), such RFP being incorporated
81 herein as if fully set forth as Exhibits A-1 and A-2, and all other exhibits to this Agreement.

Should there be any inconsistencies between this Agreement and the RFP, this Agreement shall control. In summary, the documents shall control in the following order:

- i. Agreement
- ii. Exhibits A-1 & A-2
- iii. Exhibit B
- iv. Exhibit B-1, B-2, and B-3

The Contractor shall furnish all labor, materials, and equipment as specified herein to provide and perform the Work and every part thereof. The Contractor represents and warrants that it shall perform the Work and every part thereof in a manner consistent with the level of care and skill customarily exercised by other professional Contractors under similar circumstances.

ARTICLE 2: TERM OF THE AGREEMENT

Unless terminated by either party for cause this Agreement shall commence on May 1, 2015 at 07:00 hours and shall terminate on May 1, 2018 at 07:00 hours. The City, at its option, may extend this Agreement for an Optional 2 Year Extension - Optional Year 4 (5/1/18 to 5/1/19 and Optional Year 5 (5/1/19 to 5/1/20) at the prices stated herein. If the Contractor holds the Optional Year 5 prices firm for a potential Year 6 and Year 7, the City may at its option extend this Agreement for an additional 2 Years.

Each contract year shall begin on May 1 at 07:00 hours and conclude on May 1 of the following year at 07:00 hours.

ARTICLE 3: COMPENSATION

The following words shall have the following meaning.

Guaranteed Minimum Payment (hereinafter GMP) shall mean the minimum amount of money for a specified Agreement year payable by the City to the Contractor on the first day of each month equal to one twelfth (1/12) of the GMP inclusive of an EMS manager.

Optional 2 Year Extension shall mean the final optional extension period described in Article 2 of this Agreement exclusive of Year 6 and Year 7.

Contractor Retained Secondary Threshold Amount (hereinafter CRSTA) shall mean those additional sums, if any, collected by the Contractor solely from billed services to third parties up to a maximum of \$1,090,655 year 1, \$1,102,870 year 2, \$1,115,221 year 3, \$1,127,711 optional year 4, and \$1,140,341 optional year 5. GMP shall not be included as a component of CRSTA.

Positive Revenue shall mean any amounts collected by the Contractor from third parties exceeding CRSTA. GMP shall not be included in the calculation of Positive Revenue.

City Payments shall mean Positive Revenue payable to the City by the Contractor up to full reimbursement for the City's costs to provide Paramedic Services/Emergency Medical Services

as defined in Exhibit C. GMP and CRSTA shall not be included in the City's calculation of Paramedic Services/Emergency Medical Services.

A) Guaranteed Minimum Annual Payment

As consideration for the Work, the City shall pay the Contractor annual GMP as set forth in Table One.

Table One

Year No.	Agreement Year	Guaranteed Minimum Payment
1	5/1/15 to 5/1/16	\$290,880
2	5/1/16 to 5/1/17	\$294,138
3	5/1/17 to 5/1/18	\$297,433
Optional 2 Year Extension		
4	5/1/18 to 5/1/19	\$300,764
5	5/1/19 to 5/1/20	\$304,132

B) Contractor Retained Secondary Threshold Amount

In addition to GMP, the Contractor shall be entitled to retain CRSTA as set forth in Table Two.

Table Two

Year No.	Agreement Year	Contractor Retained Secondary Threshold Amount (CRSTA)	Agreement Year Collections*	Positive Revenue/City Payments*
1	5/1/15 to 5/1/16	\$1,090,655	\$1,115,655	\$25,000
2	5/1/16 to 5/1/17	\$1,102,870	\$1,117,870	\$15,000
3	5/1/17 to 5/1/18	\$1,115,221	\$1,120,221	\$5,000
Optional 2 Year Extension				
4	5/1/18 to 5/1/19	\$1,127,711	\$1,122,711	\$5,000 at risk
5	5/1/19 to 5/1/20	\$1,140,341	\$1,125,341	\$15,000 at risk

* These amounts are used for illustrative purposes only, any inconsistency between the Table and the narrative of the Agreement shall be controlled by the narrative of the Agreement.

CRSTA shall be the exclusive property of the Contractor but only through its collection for billed services for Work. The City shall have no obligation to pay sums above GMP except for "additional services" as described in Article 3 (c). After the Contractor has achieved 100%

payment of CRSTA (Full CRSTA) all subsequent collections shall be Positive Revenue and paid to the City as City Payments up to full reimbursement for the City's costs to provide Paramedic Services/Emergency Medical Services as defined in Exhibit C. After the City receives one hundred percent of City Payments, the Contractor shall receive five percent (5%) of amounts collected by the Contractor from third parties as a paramedic billing services commission. The remaining Ninety five percent (95%) shall be paid to the City.

C) Additional Paramedic Services

During the term of this Agreement, if the City requests that Contractor assign additional paramedic personnel to the City, or that the City requests assigned personnel work hours in excess of those specified in this Agreement, the City shall pay Contractor an additional sum equal \$26.31 per hour during the first three years of this Agreement and \$27.92 during the Optional Two Year Extension period for each additional full hour worked by paramedic assigned and performing the additional Work or additional hours of Work . Time periods less than a full hour shall be prorated. Contractor shall issue an invoice for excess personnel hours, and the City agrees to pay, if undisputed, any such invoice within thirty (30) days.

D) Emergency Reserve Ambulance

The Contractor and its affiliated companies will make available, at the request of the City, a reserve ambulance for use by the City, in the event of an emergency breakdown of two or more front line ambulances owned by the City, provided the Contractor has an ambulance available for use, at no charge to the City.

ARTICLE 4 – COLLECTION

Contractor shall prepare, deliver, process, and collect the receipts for bills for services for the Work. Contactor shall send bills to insurance companies, third party payors and to patients, as appropriate and as further described herein.

A) Paramedic Service Billing Rates

The City shall have sole and exclusive right to set and adjust billing rates for services as it deems appropriate throughout the term of this Agreement. Upon the City's request and at no cost to the City, Contractor shall provide consulting services to the City to assist with evaluating the City's billing rates. The City has pursuant to ordinance established, and may periodically amend, billing rates for services, Contractor shall bill at the rates set forth in the ordinance. The City shall provide the ordinance to the Contractor upon execution of this Agreement. Amended billing rates shall be imposed by the Contractor upon the effective date of said ordinance pursuant to this Section. The City shall fax or e-mail the amended ordinance to the Contractor upon approval by the City Council.

If the City modifies its billing rates so the cumulative effect of the modification(s) reduces the Contractor's ability to collect its CRSTA, the Contractor may within thirty days of notice of the amended ordinance as set forth above, provide the City with applicable documentation setting forth why its CRSTA may not be achieved as set forth in Article 3. If the City and Contractor cannot agree to a new GMP and/or CRSTA compensation terms, the Contractor may issue a written notice to terminate this Agreement. In this instance the Contractor shall continue to

perform the Work and continue to be compensated in the amounts as set forth in Article 3 until replacement services for the Work are established.

The City may also establish reasonable policies for service(s) exempt from payment, such as hard ship patients when a hardship designation has been issued by the City's resource hospital. The Fire Chief (or designee) and Contractor's President shall be the primary point of contact for determining the eligibility for service(s) exempt from payment of any and all such claims within a timely basis. Any and all policies established shall be in accordance with all applicable rules, laws, regulations and guidance.

B) Contractor's Service Billing Diligence

Once the Contractor has collected and achieved full payment to it of CRSTA, (hereinafter Full CRSTA) it shall continue to diligently pursue collection of billings for services in the same manner and employing the same procedures and techniques used to achieve Full CRSTA. The parties acknowledge that a number of variables impact collections of ambulance reimbursement/paramedic service but stipulate that after the Contractor has achieved Full CRSTA ongoing billing diligence shall be measured as required by this paragraph based on the following formula: the total dollar amount collected divided by total number of bills/trips for services that have completed a full One Hundred Eighty (180) day billing cycle shall equal average collection amount per service bill/trip. By way of illustration, if \$1,000,000 was collected on One Hundred Eighty (180) day billing cycle and 1700 bills/trips were paid making up that \$1,000,000 then the average collection amount per bill/trip would equal \$588.23. If the Contractor, after achieving Full CRSTA, maintains a collection amount not more than 10 percent less than the average collection amount per bill/trip the Contractor shall be deemed to have satisfied its billing diligence as required by this paragraph. Billing diligence performance reviews will be completed by Contractor on a monthly basis. All applicable reports necessary for proper evaluation will be furnished to the City on or before the 20th of each month commencing 5/1/15. If billing diligence as set forth herein is not achieved, the City may, in its sole discretion, give the Contractor written notice of its intent to terminate this Agreement after three months. If within sixty days following the City's notice the Contractor satisfies the diligence requirements set forth in this Section the City will withdraw the notice and the Contractor shall not be subject to the terms of this paragraph again until the following One Hundred Eighty (180) day billing cycle. If the diligence requirements are not satisfied within the sixty days the City may in its sole discretion elect to terminate or not terminate this Agreement; except the Contractor shall continue under the terms of this Agreement until a new Contractor takes over.

C) Documentation

Beginning June 1, 2015, Contractor shall provide City with monthly statements detailing collections pursuant to this Agreement in conformance with Exhibit D which is attached hereto and incorporated herein as if fully set forth.

D) Audit

A reconciliation and independent audit, conducted by a mutually approved auditing firm and paid for by Contractor, shall be conducted per the schedule set forth in Table Three.

Table Three

Year No.	Agreement Year	Audit Completion Date	Bill Collection Period
1	5/1/15 to 5/1/16	prior to 2/1/17	5/1/15 to 11/30/16
2	5/1/16 to 5/1/17	prior to 2/1/18	5/1/16 to 11/30/17
3	5/1/17 to 5/1/18	prior to 2/1/19	5/1/17 to 11/30/18
Optional 2 Year Extension			
4	5/1/18 to 5/1/19	prior to 2/1/20	5/1/18 to 11/30/19
5	5/1/19 to 5/1/20	prior to 2/1/21	5/1/19 to 11/30/20

E) Billing in the Name of the City

All the billing for ambulance services shall be in the name of the City of Wheaton and on its behalf including all claims for reimbursement or indemnification from third party payers. City agrees to provide Contractor with notice and documentation of any payments directly received by it within seventy-two (72) hours of receipt of said payment.

F) Guidelines

City shall provide to Contractor guidelines for sending the bills and claims. City shall provide to Contractor or authorize Contractor to receive all information needed to bill patients transported.

G) Integration and Technical Solutions

The integration and technical solutions shall be in accordance with Sections 168 through 174 of Exhibit A-2.

H) Notification to Contractor

City shall notify the Contractor of all payments, correspondence, explanation of benefits, etc. relating to the Work.

I) Internal Controls for Collection/Financial Transactions

The Contractor shall maintain generally accepted internal control procedures for the processing of all collection/financial transactions. The Contractor or its subcontractor(s) shall provide the City with a SSAE 16 Report as set forth in Section 184 of Exhibit A-2.

J) Refund Requests

In the instance of refund requests, the Contractor shall include the patient's payment information along with a detailed explanation of why the refund is requested and all information necessary to submit the refund for consideration.

K) Subcontracting

Contractor shall subcontract the billing services in this Agreement to Andres Medical Billing, Ltd., an Illinois Corporation (AMB). This paragraph shall serve as notice and agreement by the City for Contractor to utilize AMB as a subcontractor for billing services as required by this Agreement.

282
283 **L) Contractor /City Communications**

284 Contractor-City Communications shall be as set forth in Sections 185 through 188 of Exhibit A-
285 2.

286 **M) Right to Audit**

287 The right to audit shall be in accordance with Sections 193 and 194 of Exhibit A-2.
288

289 **ARTICLE 5: PERSONNEL**
290

291 **A) Surge Ambulance Availability**

292 The Contractor agrees to use its best efforts to have equipment and personnel or other company
293 under the Contractor's control, which may be present at any time at Central DuPage Hospital or
294 within the corporate boundaries of the City of Wheaton, available for service to the City of
295 Wheaton, in the event the Contractor's Wheaton assigned Paramedics are not available to
296 respond to calls (surge in demand for Ambulance response), due to their performance of duties
297 which require them to be absent from the City's geographical limits. The Contractor and the
298 City agree to work together, with DUCOMM, in order to adopt procedures for implementing
299 such assignments of other Contractor personnel, as described above.
300

301 **B) Mutual and Intergovernmental Agreements**

302 Contractor shall honor any current or future mutual aid agreements/intergovernmental
303 agreements to which the City of Wheaton is or becomes a party. There shall be no charge for
304 services rendered to the City of Wheaton or any other fire department/fire district connected with
305 the mutual aid/intergovernmental response except Contractor may charge third party payors and
306 patients in amounts consistent with the mutual aid agreements/intergovernmental agreements.
307

308 **C) EMS Medical Services Manager**

309 The Contractor shall provide one EMS Manager position as specified in Exhibit A-1 that can
310 perform the essential job functions as set forth in "Job Description" included as part of Exhibit
311 A-1.
312

313 **D) Certified Paramedics**

314 Contractor shall provide to the City written qualifications of at least five (5) certified paramedics
315 to populate the list set forth in Section 147 of the Exhibit A-1. It shall also be the responsibility
316 of the Contractor to notify the City Fire Department when there are only three (3) available
317 certified paramedics remaining on such list.
318

319 For quality control purposes, each of the Contractor's employees to be assigned to the City will
320 be interviewed jointly by a representative of the Contractor and a representative of the City Fire
321 Department prior to his/her assignment to the City. The Fire Chief, or designee, shall advise the
322 Contractor of those prospective employees that meet the City's quality requirements for
323 assignment to the City. The Contractor shall provide to the City Fire Chief a copy of resume for
324 any personnel who are being considered for assignment to the City at least one week in advance
325 of an employment interview.
326

Paramedics performing services under this agreement shall have State of Illinois certifications as specified in the Exhibit A-1 and be approved to work in the resource hospital committed to by the City. Further, all paramedics assigned to this Agreement and on the list of eligible replacements shall be investigated and approved as to reasonable health, habits, and character as per the "Employee Background Program". A record of convictions for violations of criminal or traffic laws may be grounds for rejection.

E) Employee Background Program

Illinois Background Checks: Contractor shall perform background checks on every paramedic assigned to the City Fire Department. Contractor shall conduct background investigations of all its paramedics by utilizing a Live Scan fingerprint machine or equivalent to submit fingerprints to the Illinois State Police. The following information shall be sent to the Illinois State Police via the submission system:

- i) Paramedic's first name, last name, date of birth, gender, race.
- ii) 10 finger scan.

The Illinois State Police sends to Contractor the paramedics' criminal history if any exists.

F) Driver's License Abstract

Contractor shall require paramedics to submit a certified Driver's License Abstract from the Secretary of State's office prior to being hired. All paramedics shall present and maintain a Class B non-CDL valid driver's license.

G City Access to Background Checks and Information

- i) The City shall be entitled to receive from the Contractor all background information of any paramedic assigned to the City upon written request of the City's Fire Chief.
- ii) The City reserves the right to conduct its own background check of any of Contractor's paramedics assigned to the City.
- iii) The Fire Chief or his designee has the authority to reject any paramedic candidate based on the background check.
- iv) The Fire Chief may in his sole discretion conduct background checks on current paramedics at any time.
- v) The Fire Chief may in his sole discretion periodically request and the Contractor shall update the background check on any paramedic at his discretion.

H) Not Approved for Hire

If the paramedic applicant/background check reveals information or statements that are incorrect or reveals information showing that the applicant has been convicted of a felony, or

372 misdemeanor, involving any of the following offenses, the applicant shall not be approved for
373 hire:

374
375 i) Unlawful possession with intent to deliver, any controlled substance, as such
376 term is defined in the Illinois Controlled Substances Act, as amended from time to
377 time or cannabis as defined in the Illinois Cannabis Control Act, as amended from
378 time to time; or intoxicating compound, as listed or defined in the Illinois Use of
379 Intoxicating Compounds Act as amended from time to time, or any like offense of
380 another state or country within the past ten (10) years.

381
382 ii) Unlawful possession of any controlled substance, cannabis or intoxicating
383 compound within the past five years.

384
385 iii) The offense of criminal sexual assault and criminal sexual abuse, as such
386 offenses are defined in the Illinois Criminal Code as amended from time to time
387 or any like offense of another state or country.

388
389 iv) Any offense involving violence against another person or threatened violence
390 against another person under the Illinois Criminal Code of 2012 as amended from
391 time to time, within the past ten (10) years.

392
393 v) Any offense involving moral turpitude, including but not limited to any
394 offense involving the misapplication, misappropriation or misuse of funds of
395 another person, within past five (5) years.

396
397 vi) Driving under the influence of alcohol, other drug or drugs, intoxicating
398 compound or compounds or any combination thereof under Illinois law as
399 amended from time to time, or similar provision of local ordinance or any like
400 offense of another state or country within the past five (5) years.

401
402 vii) Reckless driving under Illinois law as amended from time to time, or similar
403 provision of a local ordinance or any like offense of another state or country
404 within the past five (5) years.

405
406 **I) Operational Reporting**

407 Beginning June 1, 2015, the Contractor shall provide, monthly operational reports containing
408 data/information related to personnel activity including but not limited to sick leave/PTO usage,
409 turnover, overtime, replacement, and consecutive days worked.

410
411 **J) Paramedic Pay Scale and Benefits**

412 The Contractor shall pay a wage and other benefits to paramedics providing services under this
413 Agreement at the wage rates and benefits set forth by the Contractor in the Contractor Proposal,
414 see Exhibit B. To ensure a seamless transition from current contractor, and where not disallowed
415 by law or contract, the Contractor, where not disallowed by law or contract, shall at a minimum
416 make reasonable efforts to retain seventy-five percent (75%) of its incumbent paramedics at

wage rates set forth by the Contractor at the step wage that incumbent paramedic has obtained with the City.

K) Staffing

Staffing for paramedic services shall be pursuant to Exhibit A-1, Sections 146 through 149.

L) Duties and Responsibilities

Duties and responsibilities of Contractor for paramedic services shall be pursuant to Exhibit A-1, Section 150 and Sections 154 through 161.

M) Contractor's Responsibilities and Requirements

Contractor's responsibilities and requirements for paramedic services shall be pursuant to Exhibit A-1, Sections 162 through 164.3

N) City's Responsibilities

City's responsibilities for paramedic services shall be pursuant to Exhibit A-1, Sections 167 through 168.4.3.

ARTICLE 6: ADDITIONAL SERVICES

The Contractor shall provide only the Work specified in this Agreement and attached Exhibits. In the event the Contractor or the City determines that additional goods and/or services are required to complete the Work, such additional goods shall not be provided and/or such additional services shall not be performed unless mutually authorized in writing by the parties. Terms, frequency, and prices for additional work shall be as mutually agreed upon in writing by the City and the Contractor.

ARTICLE 7: HOLD HARMLESS AND INDEMNIFICATION

The Contractor shall defend, hold harmless, and indemnify the City, its officers, agents, employees, and elected officials, in whole or in part from any loss, damage, demand, liability, cause of action, fine, judgment, or settlement, together with all costs and expenses related thereto (including reasonable expert witness and attorney fees), that may be incurred as a result of bodily injury, sickness, death, or property damage arising out of any and all acts or omissions performed by the Contractor pursuant to this Agreement or as a result of any other claim or suit of any nature whatsoever arising from or in any manner connected with directly or indirectly, the negligent acts, errors, omissions, or intentional acts or omissions, or omissions of any agent, subcontractor, Contractor hired to perform any services on behalf of the Contractor or employee thereof, in furtherance of duties imposed pursuant to this Agreement, excluding any injury to persons or damage to property which results from a Contractor's employee performing firefighting services, or which results from the negligent acts or omission in the driving a City ambulance. Judgments or awards arising from intentional, willful or reckless operation of a City ambulance, or for punitive damages shall not be so excluded.

The City shall in all events defend, indemnify, save and hold harmless the Contractor, its agents, subcontractors, officers, volunteers and employees, from any and all claims, liabilities, obligations, debts, charges, settlements or judgments, costs and expenses (including attorneys' fees) arising from injuries or property damage, attributable to the acts or failure to act of the City, its agents, subcontractors, officers, volunteers and employees, while engaged in the performance of their duties under this Agreement.

Nothing in this Agreement shall be interpreted to waive, release or compromise, in any manner, any or all statutory or common law immunities or privileges which are all specifically and fully reserved. There are no third person beneficiaries of this Agreement.

ARTICLE 8: INSURANCE

The Contractor and each of its agents, subcontractors, and consultants hired to perform the Work provided for in this Agreement and attached Exhibits, shall purchase and maintain during the term of this Agreement:

Commercial General Liability Insurance Coverage of not less than three million dollars (\$3,000,000) in the aggregate and shall include the following coverage:

Premises/Operations; Actions of Independent Contractors; Products/Completed Operations to be maintained for two years after completion of the work; Contractual Liability, including protection for the Contractor from claims arising out of liability assumed under this Agreement, and including Automobile Contractual Liability; Personal Injury Liability including coverage for offenses related to employment; Property Damage Liability; and

Worker's Compensation Insurance with limits as required by the applicable statutes of the State of Illinois; and

Umbrella or Excess Liability Insurance coverage of not less than seven million (\$7,000,000) per occurrence.

Medical Malpractice aggregate Insurance coverage of not less than seven million dollars (\$7,000,000); and

Commercial Automobile Liability Insurance covering Contractor's owned, non-owned, and leased vehicles with coverage limits of not less than two million dollars (\$2,000,000.00) per accident. The City's insurance on its ambulances shall cover claims of negligent acts or omissions in the driving of City ambulances by Contractor's personnel in furtherance of this contract, but not judgments or awards based on the intentional, willful and wanton or reckless operation of such City ambulances by Contractor's personnel.

If there is an allegation of willful and wanton or reckless conduct against a Contractor's personnel as a result of the operation of a City ambulance, the City shall tender the defense of the claim to Contractor which may elect to defend itself and which shall indemnify the City upon a finding of willful and wanton or reckless misconduct by a Court or jury.

19
20 In the event that the City Fire Chief or his designee, after review of the facts, determines that,
21 any of the aforesaid equipment and vehicles are damaged as a result of the negligence and/or
22 intentional misconduct of Contractor's personnel, Contractor shall be responsible for repairing
23 the equipment and/or vehicles at its expense.
24

25 In this event, Contractor shall furnish, at its expense, a substitute vehicle, meeting the stated
26 requirements, and/or equipment while the City vehicle/equipment is not operational.
27

28 In the event any of the aforesaid equipment and vehicles becomes non-operational for reasons
29 other than the negligence and/or intentional misconduct of Contractor's personnel, Contractor
30 shall use its best efforts to secure, at the sole expense of the City, a substitute vehicle and/or
31 equipment while the City vehicle/equipment is not operational.
32

33 Nothing herein set forth shall be construed to create any obligation on the part of the City to
34 indemnify Contractor for any claims of negligence against Contractor or its agents, employees,
35 subcontractors or consultants except as allowed under Article 7. Prior to commencement of
36 any work under this Agreement, Contractor shall file with the City the required original
37 certificates of insurance with endorsements, including those of subcontractors, which shall
38 clearly state all of the following:
39

40 The policy number; name of insurance company; name and address of the agent or authorized
41 representative; name, address, and telephone number of the insured; project name and address;
42 policy expiration date; and specific coverage amounts; and
43

44 That the City of Wheaton (including its agents, elected officials, officers and employees) is
45 named as an additional insured under all coverage, except Workers' Compensation, and that
46 all such coverage shall be primary for the City, its agents, elected officials, officers, and
47 employees; and
48

49 That the City shall receive thirty (30) days written notice prior to cancellation or alterations
50 reducing the policy limits and/or coverage and the words "endeavor to" are to be eliminated
51 from the cancellation provision of standard ACORD certificates of Insurance; and
52

53 Any other insurance the City possesses shall be considered excess insurance only and shall not
54 be required to contribute with Contractor's insurance; and
55

56 Any deductibles or self-insured retention shall be stated on the certificates of insurance provided
57 to the City. Self-insured retentions shall be subject to the reasonable approval of the City. The
58 Contractor shall identify all self-insured retentions when it files its proofs of insurance with the
59 City or based on any self-insured retention created any time after the City's approval of the
60 Contractor's initial insurance submissions; and
61

62 In addition to all of the insurance requirements identified above and contained on the certificates
63 of insurance, all policies of insurance under this section shall also be subject to the following
64 requirements:

555
556 All insurance carriers providing coverage under this Agreement shall be authorized to
557 do business in the State of Illinois and shall be rated at least A:X in A.M. Best and
558 Companies Insurance Guide or otherwise acceptable to the City; and
559

560 Insurance policies and certificates issued by non-admitted insurance carriers are
561 unacceptable. If unable to secure non-admitted insurance carriers the Contractor shall
562 increase the Letter of Credit by three hundred thousand dollars (\$300,000) or provide a
563 separate Letter of Credit in that amount authorizing the City to draw upon for claims
564 purposes. Said letter of Credit shall be approved by the City Attorney; and
565

566 All casualty and professional liability insurance shall be occurrence policies. Claims
567 made policies are unacceptable; and
568

569 The City shall have the right to reject the insurer/insurance of the Contractor or any
570 subcontractor; and
571

572 The City will consider deductible amounts and self-insured retentions as part of its
573 review of the financial stability of the bidder; and
574

575 No acceptance and/or approval of any insurance by the City shall be construed as
576 relieving or excusing the Contractor, or the surety, or its bond, from any liability or
577 obligation imposed upon either or both of them by the provisions of the Agreement
578 Documents; and
579

580 The City may require increases in Contractor's insurance coverage amounts over the
581 course of this Agreement as it deems necessary so long as it reimburses Contractor for
582 the actual increase in Contractor's insurance premiums attributable to the City's requested
583 increase; and
584

585 Insurance coverage required by this Agreement shall be in force throughout the
586 Agreement Term and upon written request by the City, the Contractor shall, within 7
587 days, provide to the City acceptable evidence of current insurance. Should the
588 Contractor fail to provide acceptable evidence of current insurance following written
589 request, the City shall have the absolute right to terminate the Agreement without any
590 further obligation to the Contractor; and
591

592 The Contractor shall assume all on-the-job responsibilities as to the control of persons
593 directly employed by it; and
594

595 Where Contractor's coverage is primary, Contractor shall control the defense to the
596 extent of its insurance limits.
597
598
599
600

ARTICLE 9: COMPLIANCE WITH LAWS

Each party shall comply with all applicable federal, state, and local laws, rules, and regulations, and all City ordinances, rules and regulations now in force or hereafter enacted, in the provision of the Work including but not limited to the Fair Debt Collections Practices Act, including the "Mini-Miranda" statement.

ARTICLE 10: FREEDOM OF INFORMATION ACT

The Contractor shall, within twenty four business hours of the City's written request, provide any documents in the Contractor's possession related to the Agreement which the City is required to disclose to a requester under the Illinois Freedom of Information Act. This provision is a material covenant of this Agreement.

ARTICLE 11: TERMINATION OF AGREEMENT

If the Contractor fails to perform according to the terms of this Agreement, then the City may terminate this Agreement upon seven (7) days written notice to the Contractor. In the event of a termination, the City shall pay the Contractor for services performed as of the effective date of termination, less any sums attributable, directly or indirectly, to Contractor's breach.

Upon the termination or expiration of this Agreement, the Contractor must continue to perform all services and requirements of this Agreement for a period up to twenty-four (24) months for services billed prior to date of a new contractor. At the end of this 24-month period, the Contractor will submit to the City all outstanding receivables and other City issued accounts in a format acceptable (electronic and paper) to the City.

ARTICLE 12: CANCELLATION FOR UNAPPROPRIATED FUNDS

The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law. City shall provide Contractor with written reasonable notice, not less than 30 days, of termination of this Agreement pursuant to this Article.

ARTICLE 13: DEFAULT

In case of default by the Contractor, the City will procure articles or service from other sources and hold the Contractor responsible for any excess cost incurred. Each party reserves the right to cancel the whole or any part of the Agreement if either party fails to perform any of the provisions in the Agreement, becomes insolvent, suspends any of its operations, or if any petition is filed or proceeding commenced by or against the Contractor under any State or Federal law relating to bankruptcy arrangement, reorganization, receivership, or assignment for the benefit of creditors. The Contractor will not be liable to perform if situations arise by reason of strikes, acts of God or the public enemy, illegal acts of the City, fires or floods.

648 **ARTICLE 14: PATENTS**

649
650 The Contractor shall protect, defend, and save the City harmless against any demand for
651 payment for the use of any patented material process, article, or device that form a part of
652 the Work covered by the Agreement resulting from or based upon the actual or alleged services
653 performed by Contractor pursuant to this Agreement.
654

655 **ARTICLE 15: DISCRIMINATION PROHIBITED**

656
657 Each party shall comply with the provisions of the Illinois Human Rights Act, as amended, 775
658 ILCS 5/1-101 et seq. (1992 State Bar Edition), and with all rules and regulations established
659 by the Department of Human Rights. Each party agrees that it will not deny employment to
660 any person or refuse to enter into any Agreement for services provided for in this Agreement to
661 be performed on its behalf on the basis of unlawful discrimination as defined in the Illinois
662 Human Rights Act. The City shall not require the Contractor's employees to perform any act
663 which is contrary to the aforesaid.
664

665 **ARTICLE 16: STATUS OF INDEPENDENT CONTRACTOR**

666
667 Both City and Contractor agree that Contractor will act as an Independent Contractor and shall
668 not be a joint venture with the City in the performance of the Work. Accordingly, the
669 Independent Contractor shall be responsible for payment of all taxes including federal, state,
670 and local taxes arising out of the Contractor's activities in accordance with this agreement,
671 including by way of illustration but not limitation, federal and state income tax, social security
672 tax, and any other taxes or license fees as may be required under the law. Contractor further
673 acknowledges under the terms of this Agreement, that it is not an agent, employee, or servant
674 for the City for any purpose, and that it shall not hold itself out as an agent, employee, or
675 servant of the City under any circumstance for any reason. Contractor is not in any way
676 authorized to make any agreement, or promise on behalf of City, or to create any implied
677 obligation on behalf of City, and Contractor specifically agrees that it shall not do so. City
678 shall have no obligation to provide any compensation or benefits to Contractor, except those
679 specifically identified in this Agreement. City shall not have the authority to control the
680 method or manner by which Contractor complies with the terms of this Agreement.
681

682 **ARTICLE 17: ASSIGNMENT; SUCCESSORS AND ASSIGNS**

683
684 Neither this Agreement, nor any part, rights nor interests hereof, may be assigned, to any other
685 person, firm or corporation without the written consent of all other parties. Upon approval of
686 assignment, this Agreement and the rights, interests and obligations hereunder shall be binding
687 upon and shall inure to the benefit of the parties hereto and their respective successors and
688 assigns.
689

690 **ARTICLE 18: CHANGE OF OWNERSHIP/INSOLVENCY**

691
692 In the event that there is a change in ownership (legal or beneficial) in the Contractor
693 during the term of this Agreement, including any change brought about by the sale of the

assets of the Contractor or by the sale of more than twenty-five percent (25%) of the stock of the Contractor or if the Contractor is placed in receivership or otherwise files a petition for bankruptcy, Contractor shall give the City no less than ninety (90) days advance written notice prior to any such change in ownership, sale, receivership, bankruptcy, etc. During such ninety (90) day period, the City shall have the right to review the Agreement and may terminate it at any time during said ninety (90) day period. If the Contractor fails to file ninety (90) day notice, it shall constitute a default under this Agreement. Changes in senior management shall be reported in writing to the City.

ARTICLE 19: RECOVERY OF COSTS

In the event that either party is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all reasonable costs and expenses incurred as a result of the action or proceeding, including expert witness and attorney's fees.

ARTICLE 20: WAIVER

Any failure of either the City or the Contractor to strictly enforce any term, right, or condition of this Agreement shall not be construed as a waiver of such term, right, or condition.

ARTICLE 21: NOTIFICATION

All notices provided for or permitted in this Agreement shall be in writing and shall be either (i) served personally during regular business hours; (ii) served by electronic mail or facsimile data transmission during regular business hours; or (iii) served by certified or registered mail, return receipt requested, addressed to the address listed in this Agreement with postage prepaid and deposited in the United States mail. Notice served personally and by electronic mail or facsimile data transmission shall be effective upon receipt, and notice served by United States mail shall be effective three (3) business days after receipt of delivery is signed.

All notification under this Agreement shall be made as follows or to such address or party as any party shall designate by notice delivered or sent in the manner prescribed in this Article.

If to the Contractor:

Kurtz Paramedic Service, Inc.
Attn:
P.O. Box 129
New Lenox, IL 60451
Fax Number:
E-Mail:

If to the City:

City of Wheaton
Attn: City Clerk
303 West Wesley Street, P.O. Box 727
Wheaton, IL 60187-0727
Fax Number: 630-260-2017
E-Mail:

ARTICLE 22: INTEGRATION

The provisions set forth in this Agreement and in the Exhibits attached hereto and incorporated herein represent the entire agreement between the parties and supersede all prior agreements, promises, and representations, as it is the intent of the parties to provide for a complete

integration within the four corners of this Agreement. This Agreement may be modified only by a further written agreement between the parties, and no modification shall be effective unless properly approved and signed by each party. No course of conduct before, or during the performance of this Agreement, shall be deemed to modify, change or amend this Agreement.

ARTICLE 23:NON-DISCLOSURE

During the course of the Work, Contractor and City may have access to the other parties proprietary and confidential information including, but not limited to, methods, processes, formulae, compositions, systems, techniques, computer programs, databases, research projects, resident name and address information, financial data, and other data. Each party shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose or disseminate such information to any third party without the express written consent of the other party.

ARTICLE 24: SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.

ARTICLE 25: FORCE MAJEURE

No party hereto shall be deemed to be in default or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party.

ARTICLE 26: COURTS OF JURISDICTION

The parties agree that any and all disputes, disagreements or litigation, by, between, or amongst them, related to this Agreement shall be exclusively heard and resolved in the courts of the Eighteenth Judicial Circuit, DuPage County, Illinois.

ARTICLE 27: GOVERNING LAW

This agreement is governed by the laws of the State of Illinois. Exclusive jurisdiction for any litigation involving any aspect of this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

ARTICLE 28: SUBPOEAS AND RECORDS REQUESTS

Contractor shall charge and retain fees of the requesting party as allowed under applicable law for reproduction of medical records upon request of persons authorized to receive them.

ARTICLE 29: NO THIRD-PARTY BENEFICIARIES

It is the explicit intent of the parties hereto that: no person or entity other than the parties hereto, except assignees as contemplated in Article 17, is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties hereto; that there are no third party beneficiaries of this agreement; and that nothing in this agreement shall be interpreted to waive, release or compromise any statutory or common law privileges or immunities which could be asserted as defenses to claims or lawsuits by persons or entities who are not parties to this agreement.

ARTICLE 30: CONFIDENTIALITY

The parties will not use or disclose any sensitive or confidential information in any way that would violate any law regarding the privacy, confidentiality or security of the sensitive or confidential information including but not limited to the Administrative Simplification Section of the Health Insurance Portability and Accountability Act of 1996 as codified in 42 U.S.C. § 1320d through 3-8 ("HIPAA") and the requirements of any regulations promulgated thereunder, including without limitation the federal privacy regulation as contained in 45 C.F.R. part 164 (the "Federal Privacy Regulations"). Both parties agree not to use or further disclose any protected health information, as defined in 45 C.F.R 164.504, or individually identifiable health information, as defined in 42 U.S.C § 1320d (collectively, the "Protected Health Information") concerning a patient other than as permitted under this Agreement and the requirements of HIPAA or regulations promulgated under HIPAA, including without limitation, the Federal Privacy Regulations.

For purposes of this Agreement, Contractor is a Business Associate and City is a Covered Entity. The parties shall execute the attached Business Associate Agreement, Exhibit E, which shall be incorporated into this Agreement as if fully set forth herein.

ARTICLE 31: RECORDS

All medical records relating to the services rendered by the ambulance crew, claims, run reports, etc. shall be and remain the sole property of City.

ARTICLE 32: NON-SOLICITATION

The City agrees not to solicit, or cause or induce a third party to solicit, for the purpose of hiring any of Contractor's employees placed with the City to perform like services for the City, for the duration of the Agreement and any renewals and extensions thereof and for one year thereafter; unless mutually agreed by Contractor and City.

832 **ARTICLE 33: LIMITATION OF AUTHORITY**

833
834 Contractor and its employees shall have the authority to provide services under this Agreement
835 make and implement day to day decisions that are necessary in the performance of its obligations
836 herein, and render directions to all third parties in connection therewith. Notwithstanding
837 anything contained herein to the contrary, in no event shall Contractor have the right or
838 authority, express or implied, to commit, bind or obligate the City contractually or otherwise to
839 any liability or agreement or to cause the City to incur any obligation to any third party.
840

841 **ARTICLE 34: AUTHORITY**

842
843 The Contractor represents that this Agreement is executed pursuant to approval of its President.
844 The City represents that this Agreement is executed pursuant to its Mayor and City Council.
845

846 **ARTICLE 35: COUNTERPART**

847
848 This Agreement may be executed in two or more counterparts, each of which shall be deemed an
849 original, but all of which together shall constitute one and the same instrument.
850

851 In Witness Whereof, the parties have executed this Agreement this 14th day
852 of April 2015.
853

854
855 City of Wheaton, an Illinois Municipal Corporation

856
857 By [Signature] date 4/14/15
858 MAYOR

859 Attest:

860 [Signature]
861 Sharon Barrett-Hagen, City Clerk
862

863
864 Kurtz Paramedic Service, Inc.

865
866 By _____ date _____
867

868
869 Attest:

870
871 **EXHIBITS**

- 872 A-1 Paramedic Services RFP
873 A-2 Ambulance Billing RFP
874 B Contractor Best and Final Offer, RFP Response 1, 2, and 3
875 C Paramedic City Costs
876 D Monthly Collection Reporting Statements
877 E Business Associate Agreement