

CONTRACTOR AGREEMENT

This Agreement (“AGREEMENT”) is entered into by and between City of Waukesha Fire and EMS (“PROVIDER”) and Public Consulting Group LLC (“PCG” or “CONTRACTOR”) as of August XX, 2022 (“Effective Date”).

WHEREAS, The Centers for Medicare and Medicaid Services (CMS) implemented a Ground Ambulance Data Collection System in response to legislation passed by Congress in the Bipartisan Budget Act of 2018 requiring providers of ground ambulance services to collect and report expenditures, revenues, utilization, and other data; and

WHEREAS, CONTRACTOR possesses professional skills that can assist PROVIDER in collecting and reporting the required data elements to complete the Ground Ambulance Data Collection System; and

WHEREAS, PROVIDER wishes to engage CONTRACTOR as an independent contractor to perform professional services in connection with this initiative;

THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged, PROVIDER and CONTRACTOR hereby agree as follows:

1. Description of Services

CONTRACTOR will provide the professional services assigned by PROVIDER and more fully described in Attachment A (the “Contracted Services”). CONTRACTOR acknowledges and agrees that time is of the essence in the value of the Contracted Services and shall render such Contracted Services in a prompt and diligent manner.

2. Term

CONTRACTOR will commence performance for the Contracted Services under this AGREEMENT on January 1, 2023 and will complete performance by December 31, 2024 (the “Term”). Unless otherwise specified by PROVIDER in writing, CONTRACTOR will provide the Contracted Services for the full Term.

Upon the expiration or termination of this AGREEMENT for any reason, all rights granted hereunder shall immediately terminate except for those concerning compensation, confidentiality, intellectual property, or any other provision that, by its terms, is intended to survive the expiration or termination of this AGREEMENT.

3. Compensation

a. PROVIDER will compensate CONTRACTOR pursuant to the provisions contained in Attachment B and this Section 3, and will not pay CONTRACTOR any other benefits, expenses, or compensation. The compensation arrangement may be changed by written agreement of the parties.

b. PROVIDER will compensate CONTRACTOR within thirty (30) days following the receipt of any billing statement(s) from CONTRACTOR that comport with the terms of this AGREEMENT in Attachment B. CONTRACTOR shall submit billing statements directly to the PROVIDER Contact Person identified in Section 5.

- c. Upon termination or expiration of this AGREEMENT, CONTRACTOR will be entitled to receive compensation for Contracted Services satisfactorily provided prior to the effective date of termination or expiration.

4. Termination

This AGREEMENT may be terminated immediately by either party following a material breach of this AGREEMENT and a failure to cure such breach within a reasonable period not to exceed ten (10) business days.

5. Notices and Contact Persons

Any notices, requests, consents and other communications hereunder shall be in writing and shall be effective either when delivered personally to the party for whom intended, e-mailed with an acknowledgment of receipt, or five days following deposit of the same into the United States mail (certified mail, return receipt requested, or first class postage prepaid), addressed to such party at the address set forth below, who shall serve as Contact Person(s) unless replaced by a party by written notice to the other party:

For CONTRACTOR:

Sarah DiCicco
Senior Consultant
816 Congress Ave., Suite 1100
Austin, Texas 78701
737.443.7420
sdicicco@pcgus.com

For PROVIDER:

Steven Howard
Fire Chief
130 West St. Paul Avenue
Waukesha, Wisconsin 53188
262.524.3651
showard@waukesha-wi.gov

6. CONTRACTOR Representation

CONTRACTOR represents that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any federal, state, or local governmental authority. CONTRACTOR shall immediately notify PROVIDER regarding the circumstances if this representation becomes no longer accurate during the term of this AGREEMENT.

7. Standards of Conduct

CONTRACTOR shall comply with all applicable laws, rules, regulations, and standards of ethical conduct, including those relating specifically to the performance of the Contracted Services under this AGREEMENT.

8. Relationship of the Parties

- a. The parties agree that CONTRACTOR is an independent contractor, and that neither it nor any of its employees is an employee of PROVIDER.

- b. CONTRACTOR shall secure and maintain all insurance, licenses, and/or permits necessary to perform the Contracted Services. CONTRACTOR shall pay all applicable state and federal taxes including unemployment insurance, social security taxes, and state and federal withholding taxes. CONTRACTOR understands that neither it nor its employees will be eligible for benefits or privileges provided by PROVIDER to its employees. PROVIDER will deliver to CONTRACTOR statements of income at the end of each tax year consistent with its independent contractor status.
- c. Except as may be otherwise provided in this AGREEMENT, CONTRACTOR has complete and exclusive authority over the means and methods of performing the Contracted Services, need not adhere to policies and procedures applicable to PROVIDER employees, and may perform the Contracted Services according to its own schedule at its own offices or at any other location. CONTRACTOR shall hire its own employees, use its own tools and equipment, and purchase its own supplies.
- d. CONTRACTOR has no authority to and shall not purport to bind, represent, or speak for PROVIDER or otherwise incur any obligation on behalf of PROVIDER for any purpose unless expressly authorized by PROVIDER.

9. Record Maintenance

With respect to all records of any kind that CONTRACTOR acquires or creates for purposes of performing the Contracted Services, CONTRACTOR shall not knowingly destroy records that are required to be preserved by law and shall maintain project records in an orderly manner. CONTRACTOR shall maintain all records generated in the performance of this AGREEMENT for no less than seven (7) years from the last date of performance under this AGREEMENT, and shall make those records available to PROVIDER promptly upon request.

10. Assignment

This AGREEMENT may not be assigned by either party without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, this AGREEMENT may be assigned by either party: (i) to one of its affiliates or subsidiaries; or (ii) in connection with a merger, consolidation, or sale of all of the equity interests of the party, or a sale of all or substantially all of the assets of the party to which this AGREEMENT relates.

11. Proprietary or Confidential Information

For purposes of fulfilling its obligations under this AGREEMENT, one party (“Disclosing Party”) may convey to the other party (“Receiving Party”) information that is considered proprietary and confidential to the Disclosing Party.

- a. “Proprietary or Confidential Information” is defined as information – including but not limited to trade secrets, strategies, financial information, sales information, pricing information, operational techniques, software, processes, strategies, procedures, plans, know-how, ideas, inventions, and intellectual property – that (i) reasonably would be considered confidential and proprietary notwithstanding the absence of any designation; (ii) has not previously been published or otherwise disclosed by the Disclosing Party to the general public, and (iii) has not previously been available to the Receiving Party or

others without confidentiality restrictions. In addition, the term “Proprietary or Confidential Information” shall also mean all information or data, regardless of whether it is in tangible form, that is disclosed or otherwise made available by the Disclosing Party to the Receiving Party and designated as “confidential” or “proprietary” by the Disclosing Party. Such designation shall be clear and in writing, either before the Proprietary or Confidential Information is disclosed or within a reasonable time afterwards. Proprietary or Confidential Information does not include information that, without a breach of this AGREEMENT, is (i) known to the Receiving Party without restriction when received, or thereafter developed independently by the Receiving Party; (ii) obtained by the Receiving Party from a source, who is lawfully in possession of such information (other than the Disclosing Party) through no breach of this AGREEMENT or any other confidentiality obligations; or (iii) in the public domain when received, or thereafter in the public domain through no fault of the Receiving Party.

- b. The Receiving Party shall preserve Proprietary or Confidential Information securely and in strict confidence, exercising no less than the same degree of care used to protect the security and confidentiality of its own confidential and proprietary information, and in any event no less than reasonable care.
- c. The Receiving Party shall use Proprietary or Confidential Information solely for purposes of the Contracted Services, and for no other purpose, and shall disclose Proprietary or Confidential Information only to such officers and employees of the Receiving Party with a need to know such Proprietary or Confidential Information for purposes of those Contracted Services. The Receiving Party shall not divulge any such Proprietary or Confidential Information to any employee who is not working on matters relating to this AGREEMENT and the Contracted Services, without the prior written consent of the Disclosing Party.
- d. CONTRACTOR acknowledges that PROVIDER is a government entity subject to laws of the State of Wisconsin concerning record-keeping and rights of the public to access government records, and that those laws take precedence over any contract between CONTRACTOR and PROVIDER. Therefore, regardless of any other provision in this AGREEMENT, if PROVIDER is required by Wisconsin’s public-records law to disclose to the public any record in its possession relating to the performance of this AGREEMENT or provided to PROVIDER by CONTRACTOR, in PROVIDER’s sole determination, PROVIDER will do so, and such disclosure will not be a violation of the terms of this AGREEMENT. CONTRACTOR acknowledges and agrees that any record provided to PROVIDER will become a government record subject to the public-records law, and that if CONTRACTOR wishes to protect information that it does not want to disclosed to the public, it should not be provided to PROVIDER. CONTRACTOR shall maintain all records generated in connection with this AGREEMENT for at least seven (7) years from the date of last performance under this AGREEMENT, and shall make those records available to PROVIDER promptly upon request.

12. **As-Is Information and Data**

The parties agree and acknowledge that CONTRACTOR will receive all information and data from PROVIDER on an as-is basis. CONTRACTOR is not responsible for errors or omissions in any data that it receives from PROVIDER, nor for any inaccuracies or mistakes in the survey that

result from errors or omissions in information received from PROVIDER. CONTRACTOR is not responsible for reviewing, evaluating, or verifying the accuracy or completeness of any information received by PROVIDER. CONTRACTOR is not liable for any reimbursement, refund, or contribution should PROVIDER be subject to penalties in connection with the Contracted Services unless such liabilities arise from CONTRACTOR's errors or omissions.

13. Intellectual Property

Each party retains all right of interest in any work product and all intellectual property that it conceives, devises, or develops in connection with the performance of the Contracted Services under this AGREEMENT, or that it owned prior to execution of this AGREEMENT, except as may be specifically assigned or transferred in a written contract. CONTRACTOR warrants that its use or creation of any intellectual property under this AGREEMENT does not infringe upon the intellectual property rights of any third party.

14. Conflicts of Interest

The parties understand that CONTRACTOR is not required to perform the Contracted Services on a full-time basis for PROVIDER and may perform services for other individuals and organizations consistent with the limitations in this AGREEMENT.

15. Waiver

The failure of a party to enforce a provision of this AGREEMENT shall not constitute a waiver with respect to that provision or any other provision of this AGREEMENT.

16. Entire Agreement

This AGREEMENT (including the attachments) constitutes the entire agreement between the parties with respect to the subject matter of the Contracted Services, and supersedes all prior agreements and understandings, both written and oral. Notwithstanding the foregoing, any separate written agreement between the parties regarding the confidentiality and security of information exchanged or used by the parties for purposes of this AGREEMENT shall be effective unless and until it is specifically terminated.

17. Amendment

This AGREEMENT may be amended only by written agreement of the parties, signed by authorized representatives and referencing this AGREEMENT.

18. Severability

If any provision in this AGREEMENT is found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions in this AGREEMENT shall continue in full force and effect.

19. Applicable Law and Venue

The parties agree that this AGREEMENT is governed by the laws of the State of Wisconsin. The parties also consent to jurisdiction in the courts of the State of Wisconsin and agree that such courts shall have exclusive jurisdiction over the enforcement of this AGREEMENT. Further, the parties agree that venue for any court action or proceeding arising out or relating to this AGREEMENT shall be in the Wisconsin Circuit Court for Waukesha County.

20. Force Majeure

Neither party shall be responsible for delays or failures in performance resulting from a Force Majeure Event. For the purpose of this AGREEMENT, a “Force Majeure Event” means any circumstance not within the reasonable control of the party affected that cannot be prevented, avoided, or removed by such party, and that materially and adversely affects the ability of that party to perform its obligations under this AGREEMENT. Events of Force Majeure shall include, but not be limited to:

- a. any act of war (whether declared or not), hostilities, invasion, military action, nuclear catastrophes, acts of terrorism, or civil disorder;
- b. a strike or strikes or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not);
- c. natural disasters, including, but not limited to, earthquakes, fires, floods, landslides, tsunamis, volcanic activity, tornadoes, hurricanes, blizzards, and other exceptional adverse weather conditions;
- d. loss or malfunction of electricity supply or of other essential utilities, communications. or computer (software and hardware) services;
- e. sabotage or piracy;
- f. plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions;
- g. act of government authority, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, or expropriation;
- h. other unforeseeable circumstances beyond the control of the parties against which it would have been unreasonable for the affected party to take precautions.

The parties shall consult together following the occurrence of a Force Majeure Event to agree to any necessary and reasonable modifications to this AGREEMENT.

21. Miscellaneous

- a. [Intentionally omitted]
- b. NEITHER PARTY SHALL BE LIABLE TO THE OTHER ANY INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, SUCH DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS, OR FINANCIAL LOSS, EVEN IF THE OTHER PARTY HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE.
- c. The liability of either party for losses arising pursuant to or in connection with the terms, covenants, or other obligations (whether express or implied) of the parties under this AGREEMENT shall not exceed \$35,000 in the aggregate un (the “Cap”).

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- d.** The parties agree that the terms of this AGREEMENT result from negotiations between them. This AGREEMENT will not be construed in favor of or against either party by reason of authorship.
 - e.** The captions and headings in this AGREEMENT are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this AGREEMENT, nor the meaning of any provisions hereof.
 - f.** Each party represents that: (1) it has the authority to enter into this AGREEMENT; and (2) that the individual signing this AGREEMENT on its behalf is authorized to do so.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the Effective Date written above.

PUBLIC CONSULTING GROUP LLC**CITY OF WAUKESHA**

BY: _____
NAME: _____
TITLE: _____
DATE: _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

**ATTACHMENT A
CONTRACTED SERVICES
Ground Ambulance Data Collection System**

- A. PROVIDER provided at least one Medicare ground ambulance transport in the calendar year of 2017, is enrolled to receive Medicare payments, and received notification from CMS of its required participation in the Medicare Ground Ambulance Data Collection Survey (the “SURVEY”). PROVIDER must comply with both U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act and as such, CONTRACTOR shall comply.
- B. This Ground Ambulance Data Collection Survey requests individual providers to submit data to CMS that relates to organizational characteristics, utilization, costs and revenue. The data may be used by CMS to evaluate the adequacy of Medicare payment rates for ground ambulance services, to inform future Medicare rate changes, and possible payment system reforms.
- C. CONTRACTOR shall be familiar with the SURVEY and all the rules, regulations and requirements associated with the SURVEY.
- D. CONTRACTOR shall have the knowledge, skills, and ability to fully complete the required data survey to the Center of Medicaid and Medicare Services (CMS) within the time frame prescribed by CMS.
- E. CONTRACTOR shall have knowledge and experience in the completion of all 13 Sections of the SURVEY and will provide the following services to the PROVIDER:
- Training via secure web-based portal with access to individual training modules for each survey component;
 - Data compilation guidance and automated tools to facilitate data collection and cost survey preparation;
 - Dedicated help desk support, up to five scheduled hours;
 - Detailed desk review of the SURVEY and supporting documentation with summary of findings;
 - Analysis of costs in comparison to “like-sized” departments;
 - Written report of findings with recommendations, areas of concern, and considerations; and
 - Scheduled conference call to walk through desk review results, cost analysis, and recommendations.

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- F. CONTRACTOR shall be able to accept data from PROVIDER in electronic submission form via a secure connection in accordance with the Health Insurance Portability and Accountability Act (HIPAA).
 - G. CONTRACTOR shall keep PROVIDER informed of all updates relating to the SURVEY.
 - H. CONTRACTOR will audit the completed Survey and its supporting documentation in accordance with the Medicare principles of reimbursement that include but are not limited to 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and other relevant documents which provide regulatory guidance on allowable costs and provider charges.
 - I. PROVIDER will submit the final report via the Centers for Medicare and Medicaid Services (CMS) web-based portal.

**ATTACHMENT B
COMPENSATION and TERM**

This AGREEMENT will be in effect from January 1, 2023 through December 31, 2024.

CONTRACTOR shall be paid compensation for all Contracted Services performed as described in Attachment A under a flat fee structure. Total compensation for this AGREEMENT shall be Ten Thousand Dollars (\$10,000.00). CONTRACTOR will invoice PROVIDER within thirty (30) days following CMS' submission deadline for PROVIDER's the Medicare Ground Ambulance Data Collection Survey. PROVIDER will remit payment to CONTRACTOR within thirty (30) days of invoice receipt.