

**GROUND AMBULANCE TRANSPORTATION AGREEMENT
(Hospice of the Hills)**

Section I

Parties

This Agreement is entered into by and between Hospice of the Hills (“Hospice”), a department and d/b/a of Rapid City Regional Hospital, Inc. (“Hospital”), a South Dakota non-profit corporation, and the City of Rapid City Department of Fire and Emergency Services (“City”).

Section II

Purpose

Hospital offers, among other services, hospice care in Pennington County and other western South Dakota counties. City is a licensed ground ambulance service located in Rapid City-Pennington County which owns ambulances and employs Paramedics and EMTs and is able to provide ambulance transport for authorized Hospice patients. Hospice staff will authorize all transportation, which will include only comfort measures during transport. Comfort measures include oxygen, but do not include CPR, cardiac monitoring, or IV therapy. Hospice staff will designate authorization to transport a patient from a residential home, assisted living facility, or nursing home to a specific hospital or other health care facility, as determined by the admitting physician and Hospice staff.

Section III

Services & Equipment to be Provided by City

In consideration of the remuneration to be paid by Hospice to City as hereinafter provided, City agrees to provide the following equipment and services:

A. Ambulance

City shall have available at all times a primary response ground ambulance that is licensed in accordance with ARSD 44:05, twenty-four hours (24) per day, seven days (7) per week and fully able to transport Hospice patients. City shall have its vehicles with such attendants and equipment as are specified in paragraph B available to respond to all calls from Hospice and/or Hospital. When requested by Hospice’s staff, and as soon as City is able, City shall dispatch its ambulance to locations specified by Hospice’s staff subject to the provisions of paragraph D below.

B. Ambulance Specifications

In addition to the requirements in paragraph A above, and hereinafter, City's ambulances shall meet the following specifications:

1. Each ambulance must be one of the types of permitted vehicles allowed for use as a ground ambulance as specified in ARSD 44:05:04:01.
2. Each ambulance must be equipped with a two-way radio communications link to Hospital.
3. Each ambulance shall have all of the capabilities and equipment required of ground ambulances found in ARSD 44:05:04:07 through ARSD 44:05:04:19 consecutively.

C. Drivers

City agrees that it will, at all times, have available personnel who have a valid driver's license, and are certified by the State EMS Authority to at least the EMT-Basic level of training. All drivers will have completed Emergency Vehicle Operators Course Training.

D. Personnel Control & Supervision

City agrees that the drivers and other support personnel required to support City's services hereunder, whether employed or contracted, shall be paid by and under the control and direction of City. (The aforesaid shall not, under any circumstances, be deemed employees or agents of Hospital.) Hospice shall have authority to dispatch and direct the ambulance to specified destinations and for purposes as it determines necessary, but all decisions relating to the operations of the ambulance, including decisions as to whether it will or will not be driven because of weather conditions, mechanical conditions and all other factors affecting ambulance safety shall be made by and be the responsibility of City and its employees or contractors. City understands that Hospice shall rely on the expertise of City, its drivers, and other personnel for all matters relating to the operations of the ambulance, and that Hospice shall have no responsibility therefore.

City further agrees that the transported patient shall remain a Hospice patient and that Hospice retains ultimate control over the patient.

E. Safety

City agrees to maintain written training and procedure manuals for its drivers and support staff and to maintain training and procedure manuals relating to familiarization with the ambulance and emergency procedures for Hospital personnel. City and Hospital shall maintain a safety surveillance program to maintain and improve the safety of its transports and to meet all requisites of Law, Rule and Regulation.

F. Governmental Permits, Licenses, Inspections

City agrees to obtain, maintain and perform at all times, all governmental certifications, licenses, permits, inspections, maintenance, record-keeping, or appraisals of any kind required for the operation of its ambulances, provision of licensed drivers, and provision of dispatch, maintenance, and other services, at its expense and in a manner that meets all federal, state, and local requirements.

G. Representations

City represents that its ambulances and drivers are properly licensed and certified and that the ambulance, drivers, and all other services and equipment provided to Hospice meet all applicable requirements of federal, state and local laws and regulations. City further represents that neither it, its shareholders, directors, officers, agents or employees are excluded, debarred, suspended or otherwise ineligible to participate in any federal reimbursement programs, or has been convicted, under federal or state law, of a criminal offense related to (a) the neglect or abuse of a patient, or (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under the Medicare or Medicaid programs.

H. Compliance With Laws and Regulations

City agrees, in the performance of services herein, to be bound by and comply with: (i) the bylaws, policies, rules and regulations of Hospital and the medical staff of the Hospital facilities, as each may be amended from time to time (provided that such amendments do not materially increase City's obligation hereunder or materially affect the financial or economic interests hereunder of City), and (ii) the standards, rules and regulations of the United States Department of Health and Human Services (hereinafter referred to as "HHS"), the South Dakota Department of Health, the Joint Commission on the Accreditation of Healthcare Organizations (hereinafter referred to as "JCAHO"), CMS (Medicare and Medicaid), and any other federal, state or local governmental agency or third-party payor, exercising authority with respect to, accrediting or providing reimbursement for Hospital.

Specifically regarding compliance with Hospital's bylaws, policies, rules and regulations, City agrees and certifies with its signature to this Agreement, that it will comply in all respects with all applicable laws and governmental regulations, including but not limited to, the Anti-Kickback statute (42 U.S.C. § 1320a-7b(b)) and the Stark Law (42 U.S.C. § 1395), in connection with its services pursuant to this Agreement, and that all services will be provided in a manner consistent with industry practices.

City further agrees and certifies that it will comply with all of Hospital's compliance program policies and with Hospital's code of conduct. City agrees to comply with these policies as they exist currently and as they may be amended in the future provided City is made aware of such amendments. Hospital shall give a copy of such policies to City.

To further ensure compliance with these laws and policies, each employee/agent of City will undergo specific compliance training, which will be provided and paid for by the Hospital.

I. Safe Harbor

Both parties agree to abide by The Office of Inspector General of the Department of Health and Human Services (“OIG”) promulgated regulation that sets forth a safe harbor for restocking arrangements to comply with the federal anti-kickback statute, effective January 3, 2002.

Section IV

Services to be Provided by Hospital/Hospice

Hospital and/or Hospice shall provide:

A. Administrative Services

Hospice will provide all other administrative services including billing, collection, and medical record keeping. City understands that Hospice shall retain all revenues collected and City agrees that it will not bill patients or their payors for patient transport services rendered.

B. Documentation of Medical Necessity

Hospice shall be responsible for determining and documenting the medical necessity of all services ordered by authorized persons. Without limiting the generality of the foregoing, Hospice shall be responsible for obtaining any preauthorization, physicians’ orders or certifications required to document medical necessity or to comply with the requirements of Medicare or other third party payor for any Hospice patient. Further, Hospice shall maintain all such documentation for the time period required by law and shall provide copies thereof to Medicare, any other applicable payor, or City upon request. Hospice shall not deny or withhold payment to City based on a finding by Medicare or other applicable payor that the service requested by an authorized person was not medically necessary or otherwise failed to meet coverage requirements, nor shall Hospice retrospectively deny payment for any service requested by an authorized person and provided to a Hospice patient for any other reason.

City shall document each service provided to a Hospice patient on City’s standard patient care form. City shall transmit such form or a copy thereof to Hospice within two (2) business days of the service and shall maintain such form or a copy thereof in accordance with Section VII below. City shall further provide Hospice with any additional information as set forth in the business associate addendum referenced in Section IX. City shall take all reasonable steps to assure that all information provided to Hospice is complete and accurate.

Section V

Consideration

In consideration of City's performance pursuant to this Agreement, Hospice agrees to pay City a ~~Hospice rate of \$123.78~~ the stretcher charge per patient transport as shown on the City's approved fee schedule for ambulance rates. The City shall give Hospice thirty (30) days notice of any changes to the stretcher charge.

Section VI

Insurance

At all times during the term of this Agreement, each party shall maintain general and professional liability insurance coverage in a minimum amount of one million dollars (\$1,000,000) per occurrence, and three million dollars (\$3,000,000) in the annual aggregate, providing coverage for the negligent acts or omissions of such party and its employees and agents. In the event such coverage is provided under a "claims made" policy, such coverage shall remain in effect (or the covered party shall procure equivalent "tail coverage") for a period of not less than five (5) years following termination of this Agreement. City additionally agrees, at its sole expense, to purchase ambulance and passenger liability insurance for its ambulance and drivers, in an amount not less than Three Million Dollars (\$3,000,000), or such larger sum as may be required by a governmental body or agency and to name Hospital as an additional insured on such policy. City agrees to furnish Hospital certificates evidencing such coverage and further agrees to carry, and furnish Hospital a certificate of insurance evidencing, workers compensation insurance coverage.

Section VII

Records

City agrees to timely provide Hospital with a legible copy of the trip report generated from each call by Hospice. It is understood that the trip report shall become a part of the patient's medical record at Hospital.

City also agrees to provide one copy of the transport sheet to Hospice.

Section VIII

Access to Records

City agrees to grant the Secretary of Health & Human Services or Controller General, or any of their duly authorized representatives or agents, access to and City agrees to preserve the following records for a period of four (4) years after the furnishing of services under this Agreement and all supplements or amendments hereto.

- A. This Agreement and the books, documents and records of City that are necessary to certify the nature and extent of the cost to the Hospital of services rendered, and
- B. City's subcontracts, if any, with related organizations as such term is defined with regard to a City in 42 CFR E405.427(b) or any amendments thereto, and such related organization's books, documents and records that are necessary to verify the nature and extent of the cost to the Hospital of services rendered.

Any request for access and the access to or production of such records shall be in accordance with regulations published pursuant to Section 952 of the Omnibus Reconciliation Act of 1980 (42 USC E1395x(v)(1)(1)) or any amendments thereto.

Section IX

Confidentiality

The parties agree that patient information is confidential and will not be disclosed to anyone without prior authorization of the patient. City agrees to instruct all its personnel to keep any patient's medical condition in strictest confidence. Additionally, both parties have signed a business associate addendum, which was attached as Addendum A to the Ground Ambulance Transportation Agreement between Hospital and City relating to Rapid City Regional West Center for Behavioral Health, effective June 1, 2003.

The parties agree that City's employees are under City's exclusive direction and control. Nothing in this Agreement will be construed to designate City or any of its employees as Hospital's employees, agents, joint ventures or partners. Hospital therefore will not be held liable or responsible for any breach of confidentiality or misuse of patient information by City or its employees as a result of confidential information exchanged pursuant to or on account of this Agreement.

~~City will indemnify Hospital for any and all costs, claims or damages including reasonable attorneys' fees arising out of the negligent or willful disclosure of confidential information by City or its staff, employees or other individuals who obtain confidential patient information by reason of this Agreement.~~

Section X

Relationship

The parties agree and understand that City is an independent contractor. Neither City nor any employee or subcontractor performing services for City is or shall be an employee, agent, partner, servant, joint venturer, or in any way associated with Hospital. Nothing herein shall be construed as giving Hospital control over, or the right to control the professional judgment or actions of City or any of its employees. Hospital and City are each solely responsible for the direction and supervision of their respective employees and each is solely responsible for compensation paid to its employees.

Section XI

Term/Termination

The parties agree that the terms of this Agreement shall be effective as of , July 19, 2004 and shall continue until terminated either with or without cause as provided below.

This Agreement may be terminated immediately for cause upon the occurrence of any of the following events:

- A. In the event either party commits any material breach of this Agreement or fails to observe or perform any of the provisions or responsibilities in any material respect and the breaching party fails to rectify the same within a period of thirty (30) days following receipt of written notice given by the complaining party and specifying the nature of the alleged breach;
- B. In the event either party consents to the appointment of a receiver, files a voluntary or involuntary petition in bankruptcy, makes a general assignment for the benefit of creditors, files a petition for reorganization, or is the subject of some other similar event;
- C. In the event of nonpayment by Hospice of amounts due hereunder, City may terminate this Agreement on ten (10) days written notice.
- D. In the event a party files a voluntary petition in bankruptcy or makes an assignment for the benefit of creditors or otherwise seeks relief from creditors under any federal or state bankruptcy, insolvency, reorganization or moratorium statute, or is the subject of an involuntary petition in bankruptcy which is not dismissed with prejudice within sixty (60) days of its filing, the other party may terminate this Agreement immediately.
- E. In the event that either party becomes ineligible to participate in any federal healthcare programs.

This Agreement may be terminated by either party without cause or fault by providing the other party ninety (90) days written notice as specified hereafter.

Any notices given hereunder are to be delivered by certified mail to the business address of the affected party as specified in Section XIII below.

Section XII

Force Majeure

City's failure to perform its obligations hereunder shall be excused if it is rendered reasonably impossible due to Acts of God or other causes beyond its reasonable control. City shall, however, perform or arrange for alternate performance as soon as reasonably possible.

Section XIII

Notice

Any notices, payments or other documents required hereunder shall be sent to the parties at the following addresses:

Rapid City Regional Hospital, Inc.
Hospice of the Hills
1011 11th Street
Rapid City, SD 57701

ATTN: Director of Home Care

City of Rapid City Department of Fire & Emergency
10 Main Street
Rapid City, South Dakota 57701

ATTN: Fire Chief

Section XIV

Supervening Law

The parties recognize that this Agreement at all times is to be subject to applicable state, local, and federal law, including but not limited to the public health and safety provisions of state and federal law and the rules and regulations of the South Dakota State Department of Health. The parties further recognize that the Agreement shall be subject to amendments of such law and regulations and to new legislation such as new federal or state of South Dakota ambulance requirements.

Notwithstanding anything to the contrary in this Agreement, if any term, covenant, condition or provision of this Agreement should be deemed to violate any future statute, regulation or ordinance, or be otherwise deemed illegal (collectively, "Jeopardy Event"), then the parties shall use their best efforts to meet forthwith and attempt to renegotiate this Agreement to remove or negate the effect of the Jeopardy Event. If the parties are unable to renegotiate this Agreement as specified above, such illegal, unenforceable or invalid provision(s) or parts thereof shall be stricken from this Agreement, and such provision(s) shall not affect the legality, enforceability or validity of the remainder of this Agreement, except as hereafter provided. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in economic effect to the stricken provision as is legally possible. However, if either party reasonably and in good faith determines that the finding of illegality or unenforceability adversely affects the material consideration for its performance under this Agreement, then such party may, at its option, by giving written notice to the other, terminate this Agreement pursuant to Section XI.

Section XV

Assignability

The parties agree that neither party hereto shall assign this Agreement or any of the rights or obligations hereunder to any other person, firm, or corporation for any reason without the prior express written consent of the authorized representative of the other party.

Section XVI

Amendment

The parties hereto agree that the terms and conditions of this Agreement may be amended or modified at any time upon mutual consent, in writing, of the parties hereto.

Section XVII

Governing Law

The parties agree that this Agreement shall be subject to and governed by the laws of the State of South Dakota.

Section XVIII

Non-discrimination

City agrees: (a) not to differentiate or discriminate in its provision of services to Hospice's patients because of race, color, national origin, ancestry, religion, sex, age, or any other classification protected by law; and (b) to render services to Hospice's patients in the same manner, and in accordance with the same standards, as offered to other patients.

Section XIX

No Influence on Referrals

It is not the intent of either party to this Agreement that any remuneration, benefit or privilege provided for under this Agreement shall influence or in any way be based on the referral or recommended referral by either party of patients to the other party or its affiliated providers, if any, or the purchasing, leasing, or ordering of any services other than specific services described in this Agreement. Any payments specified or referred to in this Agreement are consistent with what the parties reasonably believe to be the fair market value for the services provided.

Section XX

Indemnification

Each party (the "Indemnitor") shall indemnify, defend and hold the other, and its employees and agents (collectively the "Indemnitee") harmless against any claims, liability, losses or damages (collectively "Claims"), incurred by the Indemnitee which arise from any breach of this Agreement or any negligent, intentional or other tortious act or failure to act of the Indemnitor related to the performance of this Agreement. This provision shall survive the termination of this Agreement. The Indemnitee agrees to promptly notify the Indemnitor of any Claim against it which it expects to give rise to a duty of indemnity by the Indemnitor.

Section XXI

Miscellaneous

In the event any provisions hereof shall be legally unenforceable, the remaining provisions shall nevertheless be carried into effect. All section headings have been inserted for convenience only and are not to be construed as part of the Agreement itself. The waiver by any one party of any breach or failure of the other party to perform any obligations herein shall not constitute the waiver of any similar subsequent breach.

Section XXII

Integration

The parties agree that this writing and any other writings referenced in this writing constitute the entire Agreement between them and that there are no other agreements or understandings of any kind or character except those contained herein.

By their signatures below the parties evidence they have read and understand this Agreement and agree to be bound by its terms.

HOSPITAL

Rapid City Regional Hospital, Inc.

By: _____
Its: Vice President of Patient Care
Date: _____

CITY

City of Rapid City Department of Fire and Emergency Services

By: _____
Its: Mayor
Date: _____

By: _____
Its: Finance Officer
Date: _____

By: _____
Its: Fire Chief of Rapid City Department
of Fire and Emergency
Date: _____