

Roger Tidball, Town Supervisor
Jennifer Howe, Town Clerk
Brandy Fall, Deputy Town Clerk



John D. Ganther, Jr., Council Member
Francis R. Potter, Council Member
Jeffrey Senecal, Council Member
William Wenzel, Council Member

5853 Western Turnpike
Duanesburg, New York 12056

Town of Duanesburg

Schenectady County

P# 518-895-8920
F# 518-895-8171

Thursday, May 28, 2020

Town Board Meeting Agenda

Meeting Time: 7:00PM

Call to order
Pledge of Allegiance

Approval of minutes for: Town Board Meeting on Thursday May 14, 2020

Payment of Claims

Committee Reports

Highway
Public Safety
Park
Sewer Districts #1, 2 & 3
IT

Business Meeting:

- 1. Motion to authorize the supplemental appropriation of \$86,690, to account for the additional funds necessary to for DVAC to retain two additional, qualified day-time staffers during the remainder of the 2020 calendar year.**
- 2. Motion to approve and authorize the Town Supervisor to execute the General Ambulance Service Contract.**
- 3. Motion to accept the resignation of Phil Sexton as Planning Board Chair.**
- 4. Motion to appoint Jeff Schmitt as Planning Board Chair.**

Privilege of the Floor:

Comments are limited to 5 minutes per person. Be respectful. Address the entire Town Board. Individual members are not to be singled out. Speak of issues related to Town business. There will be no tolerance for personal attacks on Board Members. The board reserves the right to ask that your question be put in writing and to be submitted to the Town Clerk to then be distributed to the Town Board. Questions will be answered in a timely manner and mailed to the resident.

PLEASE NOTE: AGENDA ITEMS MAY BE ADDED OR DELETED WITHOUT NOTICE

Town of Duanesburg Town Board

RESOLUTION NO. __ - 2020

May 28, 2020

WHEREAS, pursuant to Town Law § 112, the Town Board of the Town of Duanesburg (the “Town Board”) has the authority to make supplemental appropriations under certain circumstances; and

WHEREAS, the Town Board has determined that it is in the public interest to increase the amount budgeted to pay Duanesburg Volunteer Ambulance Corps (“DVAC”) to provide general ambulance services within the Town during the 2020 calendar year from \$76,850 to \$163,540; and

WHEREAS, the increase in DVAC’s compensation serves the public interest because it will enable DVAC to supplement its staffing with the addition of two qualified, day-time staffers; and

WHEREAS, based on the foregoing, the Town wishes to authorize a supplemental appropriation in the amount of \$86,690.

NOW THEREFORE BE IT RESOLVED, that the Town Board hereby authorizes the supplemental appropriation of \$86,690, to account for the additional funds necessary to for DVAC to retain two additional, qualified day-time staffers during the remainder of the 2020 calendar year.

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its regular meeting of May 28, 2020

Roger Tidball, Supervisor

Town Clerk/Deputy Town Clerk

Present:
Absent:

Town Board Members:

| | | | |
|----------------|-----|-----|---------|
| Roger Tidball | Yea | Nay | Abstain |
| John Ganther | Yea | Nay | Abstain |
| Rick Potter | Yea | Nay | Abstain |
| William Wenzel | Yea | Nay | Abstain |
| Jeff Senecal | Yea | Nay | Abstain |

TOWN OF DUANESBURG TOWN BOARD

RESOLUTION __ - 2020

May 28, 2020

WHEREAS, pursuant to General Municipal Law § 122-B, the Town may contract with a volunteer ambulance company for the provision general ambulance service; and

WHEREAS, pursuant to General Municipal Law § 122-B, the Town wishes to enter into the proposed contract for general ambulance services with Duanesburg Volunteer Ambulance Corps (“DVAC”) for January 1, 2020 to December 31, 2020 (the “General Ambulance Service Contract”), attached hereto; and

WHEREAS, under the General Ambulance Service Contract, DVAC will be compensated in the amount of up to **\$252,967.87**, comprised partially by payment from the Town in the amount of \$164,540 and partially by fee collection performed by DVAC in the estimated amount of \$89,427.87.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board approves and authorizes the Town Supervisor to execute the General Ambulance Service Contract.

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its regular meeting on May 28, 2020.

Roger Tidball, Supervisor

Town Clerk/Deputy Town Clerk

Present:

Absent:

Council Members:

| | | | |
|----------------|-----|-----|---------|
| Roger Tidball | Yea | Nay | Abstain |
| John Ganther | Yea | Nay | Abstain |
| Rick Potter | Yea | Nay | Abstain |
| William Wenzel | Yea | Nay | Abstain |
| Jeff Senecal | Yea | Nay | Abstain |

**AGREEMENT BETWEEN TOWN OF DUANESBURG AND
DUANESBURG VOLUNTEER AMBULANCE CORPS., INC.
FOR EMERGENCY MEDICAL AND GENERAL AMBULANCE SERVICE IN THE
TOWN OF DUANESBURG**

THIS AGREEMENT, made the ___ day of June, 2020, between the **TOWN OF DUANESBURG**, 5853 Western Turnpike, Duanesburg, NY 12056 (the “Town”) and **DUANESBURG VOLUNTEER AMBULANCE CORPS., INC.** (“DVAC”), a not-for-profit corporation organized and existing under the laws of the State of New York, with its office and principal place of business at 130 Cole Rd, Delanson, New York 12053 (the “Agreement”);

WITNESSETH:

WHEREAS, the Town is desirous of entering into an agreement for providing emergency medical and general ambulance services including, but not limited to, Basic Life Support (“BLS”) and Advanced Life Support (“ALS”) (collectively, “Ambulance Services”), within the Town pursuant to the provisions of New York State General Municipal Law (“GML”) § 122-b; and

WHEREAS, DVAC is desirous of furnishing Ambulance Services within the Town, under the terms and conditions set forth herein; and

WHEREAS, at a regular meeting of the Town Board of the Town of Duanesburg held on May 28, 2020, the Town duly authorized this Agreement with DVAC upon the terms and conditions set forth herein; and

WHEREAS, this Agreement has been authorized by the Board of Directors of the DVAC.

NOW THEREFORE, in consideration of the mutual promises recited herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Town does contract with DVAC to furnish Ambulance Services within the Town, and DVAC agrees to furnish such Ambulance Services, subject to the following provisions:

1. TERM

This Agreement shall be effective January 1, 2020 until December 31, 2020 (the “Term”), unless otherwise extended by written agreement of the parties.

2. RENEWAL AND MODIFICATION

No provision or term of this Agreement shall be modified, amended, waived or limited except by written agreement expressly referring hereto and to the provision so modified, amended, waived or limited and signed by both parties to this Agreement.

3. OBLIGATIONS OF DVAC

DVAC will:

- 3.1 Provide Ambulance Services within the Town. DVAC will be solely responsible for supplying, maintaining, and equipping ambulances and for providing sufficient and properly trained personnel for the provision of such services and shall comply with all applicable laws and regulations including, but not limited to, the mandates of the New York State Department of Health Bureau of Emergency Medical Services and State Emergency Medical Advisory Committee, the Regional Emergency Medical Services Council of the Hudson Mohawk Valleys and Regional Emergency Medical Advisory Committee for the operation of such Ambulance Services. DVAC will arrange for ALS intercept services on an as needed basis for the Town.
- 3.2 Provide trained and qualified persons to provide Ambulance Services in accordance with the laws of New York State, Department of Health Regulations, Protocols and Policy Statements, and Regional and DVAC protocols and procedures.
- 3.3 Provide or arrange for the provision of Ambulance Services twenty-four (24) hours a day, seven (7) days per week for all persons requiring such services within the Town.
- 3.4 Incur and pay for the following operating expenses:
 - Heat, lights, telephone and all other utilities in connection with DVAC's facilities;
 - General maintenance, repairs and supplies for the equipment, vehicles and housing for ambulances and meetings;
 - Replacement of medical supplies and equipment;
 - All liability insurance on the ambulance vehicles and DVAC facilities;
 - All liability, contractual liability, malpractice, workers compensation, contractual and/or error sand omissions insurance covering all members of the DVAC; and
 - All training and continuing education of its members, including such certification and recertification as may be required by law.
- 3.5 Coordinate the provision of Ambulance Services provided in the Town by other ambulance service companies and providers of emergency medical services ("EMS") as mutual aid on an as-needed basis in accordance with federal, state, regional, and DVAC protocols and policies.

- 3.6 Provide appropriate quarters to station personnel and to store vehicles and other equipment for use in the Town.
- 3.7 No later than July 31st of each year of the Term, provide the Town with an inventory of all property and equipment owned by or in the custody of DVAC that is utilized or intended to be utilized for the provision of Ambulance Services. For purposes of this paragraph the term “property and equipment” shall mean any item with a replacement cost in excess of \$2,000.00 dollars.
- 3.8 No later than July 31st of each year of the Term provide to the Town a listing of all cash assets of DVAC, including reserve accounts.
- 3.9 Seek fee collection from persons utilizing the Ambulance Services and account for same as more fully set forth in this Agreement. Unless otherwise directed by a lawful mandate by the Town, DVAC will seek to collect co-pays or deductibles from users of the Ambulance Service as part of Fee Collection set forth in Section 5.
- 3.10 DVAC shall provide the Town with the accounting and reporting of calls, fees collected, and other matters as required in other portions of this Agreement.
- 3.11 On an annual basis no later than November 1 of each year of the Term, DVAC will make a recommendation to the Town as to the appropriate amount of fees or charges for Ambulance Services to be considered for approval by the Town for the forthcoming year. Such recommendation shall be reasonably founded on empirical data and shall provide the anticipated usual and customary rate(s) for said Ambulance Services in the forthcoming year. The Schedule of Fees for the initial term is appended hereto as **Addendum A**.
- 3.12 Warrants that any and all of DVAC corporate or internal conditions precedent to the execution of this Agreement have been satisfied or ratified by DVAC and that the signatory of this Agreement on behalf of DVAC has the authority to execute this Agreement and to bind the corporation.
- 3.13 Keep in force its Ambulance Service Certificate and maintain compliance with the applicable requirements of Article 30 of the Public Health Law and State Emergency Medical Services Code.

4. OBLIGATIONS OF THE TOWN

- 4.1 In consideration of DVAC successfully and fully providing the Ambulance Services for the Term, DVAC shall be compensated in the amount of up to **\$252,967.87** (the “Contract Fee”). The Contract fee shall be comprised partially of a payment from the Town (the “Town Payment Portion”) and partially of fee collection performed by DVAC pursuant to Section 5 (the “Fees Collected

Portion”). For the Town Payment Portion, the Town shall pay **\$163,540.00** to DVAC in one lump sum or in payments as follows¹:

\$48,109.00 on or by June 1, 2020;
\$48,109.00 on or by August 1, 2020;
\$48,109.50 on or by October 1, 2020.

The Fees Collected Portion of the Contract Fee shall be raised through fee collection performed by DVAC pursuant to Section 5. Should the amount of fees collected by DVAC during the Term, plus the Town Payment Portion, exceed the Contract Fee, the excess amount shall be remitted to the Town. If the amount of fees collected by DVAC during the Term, plus the Town Payment Portion, is less than the Contract Fee, such shortfall shall be borne by DVAC. The Town is hereby relieved from the obligation to pay DVAC more than the Town Payment Portion of **\$163,540.00**.

The Contract Fee represents the present financial commitment made by Town to DVAC plus additional monies required to ensure ambulance service coverage of the Town as set forth herein through contracting for additional day-time staffing.

- 4.2 The Town shall only be responsible to DVAC for the amounts set forth in Paragraph 4.1.
- 4.3 The Town may, pursuant to General Municipal Law Section 122-b (2), formulate such rules as it deems necessary for the provision of ambulance services and will establish a schedule of fees or charges to be paid by such persons using the services. Such fees and charges shall conform with federal and State mandates and shall be within the range of usual and customary rates for ambulance services in the region.
- 4.4 The Town may enact such lawful resolutions as necessary to affect the intended purposes of this Agreement.
- 4.5 The Town may authorize emergency call answering and ambulance dispatching of calls originating in the Town through the appropriate dispatch center.
- 4.6 Upon request of DVAC, the Town may plow, sand, salt and/or de-ice DVAC facilities so as to enable DVAC to render Ambulance Services to the Town. The Town shall retain sole discretion regarding whether to perform such snow removal and ice removal/mitigation services. With respect to the Town’s performance of snow removal and ice removal/mitigation services, DVAC will defend and indemnify the Town to fullest extent permitted by law from and against any liability

¹ Prior to the date of this agreement, the Town paid DVAC \$19,212.50 for general ambulance services during the first quarter of 2020. Thus, this amount has been subtracted from the Town Payment Portion for purposes of the schedule of remaining 2020 payments set forth in paragraph 4.1.

or claims except for liability arising out of the negligence or willful misconduct of the Town.

5. FEE COLLECTION

- 5.1 DVAC will seek fee collection from all persons utilizing the Ambulance Services.
- 5.2 DVAC, as the transporting agency, will bill patients, their insurers (including private insurers, Medicare and Medicaid) and guarantors at the usual and customary rates for the locale and as approved by the Town for the provision of Ambulance Services. Bills for services will be submitted to patients transported to or from a health care or health related facility, for properly chargeable ALS and BLS treatment, and for evaluations, assessments, and assistance that are deemed properly chargeable Ambulance Services as permitted by law. The expenses incurred for pursuing fee collection shall be borne by DVAC and subtracted from those sums received from third parties for service, including any additional costs to DVAC for providing billing services attributable to ALS billing. DVAC may contract with a vendor(s) to supply billing services and the use of such vendor shall be subject to approval by the Town. Any proposed contracts for billing services or for contactors to be retained by DVAC in order to pursue fee collection shall be subject to the approval of the Town, and Town's approval of such contracts shall not be unreasonably withheld.

6. BUDGETING

- 6.1 Prior to the fifteenth day of September of each year of the Term, DVAC will submit to the Town Supervisor for consideration by the Town Board of the Town a proposed budget for the forthcoming calendar year. The budget shall contain sufficient detail of the projected expenses, fees collected, and fund balances for the forthcoming year and be in such form as the Town may request. In addition, the proposed budget will contain a listing of the amount of fees collected through June 30 of the present calendar year and a forecast of projected fee collection through the balance of the present calendar year.

7. AUDIT AND FINANCIAL CONTROL

- 7.1 Fees collected by DVAC will be deposited in a federally insured bank account. The bank account shall be established and structured in a manner that the release of funds may only be made upon the authorization of the Town. The release of funds in a total amount less than or equal to the approved annual budgeted amount is hereby authorized pursuant to this Agreement. The release funds in excess of the approved annual budgeted amount may only be authorized upon the further express, written consent of the Town pursuant to Paragraph 2. The designated fiscal officer of the Town shall implement procedures for the accounting of fees collected by

DVAC and for the release of account funds to provide for the orderly administration, disbursement, and accounting of funds from such account. The procedures are intended to continue and may be refined or modified as the Town deems necessary or as may be required by law.

7.2 On A Monthly Basis

No later than the 15th day of each month:

7.2.1 DVAC will provide the Town with reports prepared by DVAC or its billing vendor demonstrating the number of calls generating bills, amounts billed, fees collected, accounts deemed uncollectible, and such other non-privileged financial information as the Town may require.

7.2.2 DVAC will provide the Town with copies of bank statements (with balances) and account reconciliations for the collection funds designated in Section 7.1 of this Agreement.

7.2.3 DVAC will provide the Town with copies of ambulance billing reports that include amounts billed during and the amount of fees collected during the preceding month, the amount of write-offs of uncollectable bills, if any, the percentage rate of collection in amount collected versus amount billed, and the billable call volume as a percentage of total call volume.

7.3 On An Annual Basis

No later than May 1:

7.3.1 DVAC will provide the Town with an annual summary of the number of calls and call type, collections, expenses, and other measurable deliverables as the Town may request in a format acceptable to the Town.

7.3.3 DVAC will provide the Town a copy of DVAC's (current) filed IRS Form 990 each year during the term of this Agreement. In the event that DVAC obtains an extension from the IRS to file its Form 990 beyond May 1, DVAC will provide a copy of said Form 990 to the Town as soon as possible after filing.

7.3.4 With the exception of the annual audit prepared by the certified public accountant, any reports and documentation required herein will be provided to the Town in a format either approved by or acceptable to the Town Supervisor. Nothing herein shall require or imply that DVAC is obligated to disclose a patient's identity or other protected health information as governed by HIPAA or other governmental statute, rule or regulation.

7.3.5 Donations made to DVAC and other sources of revenue not arising from fee collection (e.g. grants, fundraisers, memorials, monetary gifts) shall be disclosed but shall not be considered collections for purposes of this Section.

8. INDEMNITY

To the fullest extent permitted by law, DVAC will defend, indemnify and hold harmless the Town in any claim for personal injuries including death, damage to persons or property, misappropriation of funds, injunctive relief or administrative enforcement arising out of DVAC's operations, actions, or obligations under the Agreement. To the fullest extent permitted by law, the Town will indemnify and hold harmless DVAC in any claim for personal injuries including death, damages to persons or property, injunctive relief or administrative enforcement arising out of the Town's operations, actions, or obligations under this Agreement.

9. INSURANCE

9.1 DVAC shall purchase and maintain in full force and effect insurance policies with the following limits of insurance:

9.1.1 Commercial General Liability (GCL) / Professional Health Care Liability

Commercial General Liability / Professional Health Care Liability with limits not less than \$1,000,000 per occurrence or medical incident, \$10,000,000 general aggregate and products / completed operations aggregate for each occurrence or medical incident.

The Town shall be included as Additional Insured. Additional Insurance coverage shall apply on a primary and not contributory basis.

9.1.2 Management Liability

Each offense or Wrongful Act - \$1,000,000 / \$10,000,000 aggregate.
Defense Expense for Injunctive Relief - \$50,000

9.1.3 Automobile Liability

Business Automobile Liability with a combined single limit of not less than \$1,000,000 limit per accident, including owned, non-owned, leased, and hired vehicles. Volunteers / Employees must be identified as insured under non-owned automobiles.

The Town shall be included as Additional Insured on a primary and not contributory basis.

9.1.4 Umbrella / Excess Liability

Umbrella / Excess Liability with limits not less than \$10,000,000 per occurrence / \$10,000,000 annual aggregate – excess over automobile, general liability, professional health care liability, and management liability.

Umbrella Liability must include the Town as Additional Insured.

Umbrella / Excess Liability shall apply on a primary and not contributory basis.

9.1.5 Workers Compensation and Employers Liability

Employers Liability Insurance with limits not less than \$500,000 Each Accident for bodily injury by an accident and \$500,000 Each Employee for injury by disease.

- 9.2 All insurance required herein must be with insurers licensed to conduct business in New York State and acceptable to the Town. All insurance shall be from an insurer with A.M. Best rating form A- to A+ or better.
- 9.3 Notice of Cancellation. All policies and Certificates of Insurance shall expressly provide that the Town must receive thirty (30) days written notice in the event of material alteration, cancellation, or non-renewal coverage.
- 9.4 Waiver of Subrogation. All policies must include a Waiver of Subrogation against the Town for general liability professional health care liability, automobile liability, umbrella/excess liability, workers compensation and employer's liability.
- 9.5 Evidence of Insurance. DVAC shall furnish the Town a Certificate(s) of Insurance executed by a duly authorized representative of each insurer, setting out the compliance with the insurance requirements set forth above. Certificates of Insurance must indicate the amounts of any and all deductibles. A copy of the Additional Insured Endorsement(s) must be provided to the Town. Neither failure to provide such certificate nor the failure of the Town to request such certificate shall be deemed to be a waiver of DVAC's obligation to provide evidence of such insurance coverages.
- 9.2 All liability insurance policies procured and maintained by DVAC protecting against claims arising out of the operations, actions, or obligations of DVAC in providing Ambulance Services or related services arising directly or indirectly therefrom shall name the Town as an additional insured.

9.3 DVAC shall be responsible for providing workers' compensation insurance and or Volunteer Ambulance Workers' Benefit Insurance coverage for its employees. TOWN is not responsible for paying for and/or providing Volunteer Ambulance Workers' Benefit Insurance to any DVAC personnel above any amounts paid to DVAC by TOWN as set forth above.

10. NO WAIVER

The failure by either party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of the same, shall not constitute a waiver of any such breach or of such, or any other covenant, agreement, term or condition. By notice duly given, any party may, but shall be under no obligation to, waive any of its rights or any conditions of its obligations under this Agreement or any duty, obligation or covenant of any other party. No such waiver shall affect or alter the remainder of this Agreement, but each and every covenant, duty, agreement and condition of this Agreement shall continue in full force and effect with respect to any other existing, or subsequent, breach.

11. TERMINATION

- 11.1 Either party may terminate this Agreement for convenience upon sixty (60) days written notice to the other party.
- 11.2 Either party may terminate this Agreement for material breach upon (30) days written notice to the other party.
- 11.3 Upon termination, the pro-rated amount of the Contract Fee previously paid by the Town for the balance of the Term after the effective date of the termination will be reimbursed to the Town by DVAC. If, upon the effective date of termination, the Town owes DVAC payment for Ambulance Services rendered through date of termination, such payment will be made by the Town to DVAC within thirty (30) days of the effective date of termination.

12. ASSIGNMENT

In accordance with the provisions of Section 109 of the General Municipal Law, DVAC is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or its right, title or interest in this Agreement, or its power to execute this Agreement, to any other person without the previous consent in writing of the Town.

13. NOTICE

All notices, offers and communications required or permitted by this Agreement shall be made in writing and shall be deemed given when personally delivered to a party, or mailed by certified mail, return receipt requested, addressed as follows:

To the Town:

Town Board of the Town of Duanesburg
Town of Duanesburg Town Hall
5853 Western Turnpike
Duanesburg, New York, 12056

With a copy to:

Terresa M. Bakner, Esq.
Whiteman Osterman & Hanna, LLP
One Commerce Plaza, Suite 1900
Albany, New York, 12260

To DVAC:

Duanesburg Volunteer Ambulance Corps.
P.O. Box 130
Delanson, New York, 12053

By notice given pursuant to this paragraph, either party may designate any further or different address to which subsequent notices, offers or other communications shall be sent.

14. SEVERABILITY

To the extent permitted by law, if any provision of this Agreement is deemed by a Court of competent jurisdiction to be void or voidable, all other provisions shall remain enforceable and effective.

15. VENDOR STATUS

DVAC is a vendor to the Town. DVAC is neither an agent nor a department of the Town. Nothing herein should be deemed to infer that an employment or agency relationship exists between the parties.

16. MISCELLANEOUS

16.1 This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained herein, and merges and supersedes all prior discussions, agreements and understandings of every kind and nature among them. No party shall be bound by any condition, definition or representation other than for which is expressly provided in this Agreement.

16.2 This Agreement shall be subject to the laws of the State of New York.

- 16.3 The captions and section heading used in this Agreement are for reference related purposes only to aid the reader and are without substantive effect to the terms that follow thereafter.

TOWN OF DUANESBURG

**DUANESBURG VOLUNTEER
AMBULANCE CORPS., INC.**

By: _____
Roger Tidball, Supervisor

By: _____
Dianne Grant, Chairperson

ADDENDUM A – SCHEDULE OF FEES
JUNE 1, 2020-DECEMBER 31,2020

ALS CHARGES

| | |
|-----------------------|------------|
| ALS TRANSPORT LEVEL 1 | \$1,054.25 |
| ALS TRASPORT LEVEL 2 | \$1,082.39 |

BLS CHARGES

| | |
|-----------------------------|----------|
| BLS REFUSAL – MVA | \$112.55 |
| BLS EMERGENCY TRANSPORT | \$716.60 |
| BLS NON-EMERGENCY TRANSPORT | \$390.88 |
| MILEAGE (loaded) | \$13.51 |