February 27, 2020

TO: Board of Fire Commissioners

FROM: Ralph M. Terrazas, Fire Chief

SUBJECT: AGREEMENT WITH SEAN D. HIGGS FOR CERTIFIED ATHLETIC TRAINER SERVICES (REQUEST FOR PROPOSALS NO. 2019-038-005)

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summary

On December 5, 2018, City Council approved the recommendation of the Innovation and Performance Commission for a $350,000 Innovation Grant to the Los Angeles Fire Department (LAFD) to implement the Early Intervention Treatment Pilot Program (C.F. 18-1053). The grant will fund a Captain I, Management Analyst and contractual services for a Certified Athletic Trainer. The pilot program would provide treatment to firefighters with injuries before they become more serious. The goal is to avoid minor medical issues becoming workers’ compensation claims. Approximately 80 percent of LAFD workers’ compensation claims are related to soft tissue issues. Many of these claims are caused by firefighters performing job functions with these minor injuries that, over time, become more serious as a result of overexertion.

The LAFD released a Request for Proposals (No. 2019-038-005) on July 19, 2019 for a Certified Athletic Trainer to provide symptom intervention services, including appropriate therapies such as heat and ice treatments and exercises, in addition to education and training. Eleven proposals were received by the submittal deadline date of August 13, 2019.

An Evaluation Committee, comprised of personnel from LAFD’s Risk Management Section, reviewed and scored the eligible bid proposals based on the below criteria:

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The evaluation scores of the 11 proposers are as follows:

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<td>Christian Hakim</td>
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<td>Strive Well-Being, Inc.</td>
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Of the 11 proposers, Sean D. Higgs received the top score of 91 points. Mr. Higgs has over 25 years of experience as a Certified Athletic Trainer, and is also a Certified Strength and Conditioning Specialist. He has extensive experience working with tactical athletes, and is familiar with the Functional Movement Screening Program which is used to evaluate mobility and stability patterns that may pose risk of injury. Mr. Higgs’ work experience includes: Tactical Fitness Coach to the Irvine Police Department/Special Weapons Unit; Exercise Physiologist at Santa Ana College Fire Technology; instructor at California State University Long Beach, Saddleback College, and College & Career Advantage; Engine Crew Firefighter for the U.S. Forest Service. His expertise will greatly assist the LAFD in the development and implementation of the Early Symptom Intervention Program.

It is recommended that the contract be awarded to Sean D. Higgs as he was evaluated as the most qualified among the eligible proposers. The proposed term is for one year, commencing upon the date of execution by the City Clerk. Payment for services is not to exceed $120,000 during the term of the Agreement.

The attached Agreement has been reviewed and approved as to legal form by the City Attorney.
RECOMMENDATIONS
That the Board:
1. Approve and authorize the Fire Chief to execute the Agreement with Sean D. Higgs for certified athletic trainer services for a one-year term, commencing upon the date of execution by the City Clerk, with the compensation not to exceed $120,000 during the term of the Agreement.

2. Transmit the Agreement to the Mayor’s Office in accordance with Executive Directive No. 3.

FISCAL IMPACT
There is no impact to the General Fund. Funding for this Agreement was provided by the Innovation Fund. These funds have been transferred to the Department’s Contractual Services Account.

Board Report prepared by Captain Brian Hammond, Risk Management Section.

Attachment
AGREEMENT NO. _____________

AGREEMENT BETWEEN

THE CITY OF LOS ANGELES

AND

SEAN D. HIGGS

FOR

CERTIFIED ATHLETIC TRAINER SERVICES
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Exhibit C – Business Associate Agreement (HIPAA)
AGREEMENT NO. _________________

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES
AND
SEAN D. HIGGS
FOR
CERTIFIED ATHLETIC TRAINER SERVICES

THIS AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as “City”), acting by and through the Los Angeles Fire Department (hereinafter referred to as “Department” or “LAFD”), and Sean D. Higgs, an individual (hereinafter referred to as “Contractor”), with reference to the following:

WHEREAS, the LAFD desires to develop and implement a pilot program called the Early Intervention Treatment Program (hereinafter referred to as “Program”) that is aimed at providing treatment to firefighters for minor aches and pains before these medical issues become more serious, and result in workers compensation claims (Council File 18-1053); and

WHEREAS, in order to establish the Program, the LAFD requires the services of a contractor who specializes in early symptom treatment intervention; and

WHEREAS, the City performed its Charter Section 1022 evaluation and determined that City employees do not have the expertise to perform the work of a certified athletic trainer to assist with the development and implementation of the Program; and

WHEREAS, on July 19, 2019, the LAFD issued a Request for Proposals (RFP) seeking a qualified certified athletic trainer to assist in the development and implementation of the one-year pilot Program; and

WHEREAS, the Contractor submitted a proposal in response to the RFP, and the LAFD has determined that the Contractor possesses the qualifications and experience necessary to provide the services requested in that he received the highest score out of the eleven proposals that were evaluated; and

WHEREAS, the City desires to enter into an Agreement with the Contractor for certified athletic trainer services; and

NOW, THEREFORE, in consideration of the promises, representations, covenants and agreements provided below, the parties agree as follows:
1.0 PARTIES TO THE AGREEMENT AND REPRESENTATIVES

1.1. Parties to the Agreement

1.1.1. City – The City of Los Angeles, a municipal corporation, acting by and through the Los Angeles Fire Department, having its principal office at 200 North Main Street, 18th Floor, Los Angeles, California, 90012

1.1.2. Contractor – Sean D. Higgs, 30 Ledgewood Drive, Rancho Santa Margarita, California 92688

1.2. Representatives of the Parties and Service of Notices

The representatives of the respective parties who are authorized to administer this Agreement and to whom formal notices, demands, and communications will be given are as follows:

1.2.1. The City’s representative is, unless otherwise stated in the Agreement:

Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department
200 North Main Street, Room 1800
Los Angeles, California, 90012

With a copy to:

Scott P. Quinn, Battalion Chief
Risk Management Section
Los Angeles Fire Department
201 N. Figueroa Street, Room 1250
Los Angeles, California, 90012

The Contractor’s representative is, unless otherwise stated in the Agreement:

Sean D. Higgs
30 Ledgewood Drive
Rancho Santa Margarita, California 92688

1.3. Formal notices, demands and communications to be given hereunder by either party must be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.

1.4. If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice must
be provided as described in this Agreement, within five (5) working days of said change.

2.0 TERM OF THE AGREEMENT

2.1 The term of this Agreement shall commence upon the date of attestation by the Los Angeles City Clerk, and will terminate one (1) year from that date, unless otherwise terminated by the City as provided for in this Agreement.

2.2 To the extent that the Contractor may have provided services prior to the execution of this Agreement at the City’s request and due to immediate needs, the City hereby ratifies and accepts those services performed in accordance with the terms and conditions of this Agreement.

3.0 SERVICES TO BE PROVIDED BY THE CONTRACTOR

At City’s direction, Contractor shall:

3.1. Provide overall clinical support towards evaluating LAFD members’ injuries, developing individualized and group treatment and corrective exercise plans, restoring function and strength in firefighter-related biomechanical movements and workplace injuries.

3.2. Assist LAFD personnel with managing Program activities and associated equipment at two (2) treatment centers located at the Downtown Training Center (Frank Hotchkin Memorial Training Center), located at 1700 Stadium Way, Los Angeles, California 90012, and at Fire Station 81 (Drill Tower 81), Valley Recruit Training Academy, located at 14345 Arminta Street, Panorama City 91402.

3.3. Assist LAFD personnel in creating education content for delivery across multiple platforms that may include, but are not limited to, program newsletters, LAFD website, classrooms, and fire station visits.

3.4. Assist with Functional Movement Screen testing, as well as the creation and education of LAFD members on their individualized corrective exercise programs.

3.5. Assist LAFD personnel in collecting injury, treatment and recovery data for use in determining the Program’s effectiveness related to stated metric goals.

4.0 COMPENSATION AND METHOD OF PAYMENT

4.1. Compensation

4.1.1. The Contractor shall perform the requested services for an amount not to exceed Fifty-Seven Dollars and Seventy Cents ($57.70) per hour during
the period beginning on the date this Agreement is attested to by the Los Angeles City Clerk and ending one (1) year thereafter for the complete and satisfactory terms of this Agreement.

4.1.2. The maximum compensation for this Agreement shall not exceed One Hundred Thousand Twenty Thousand Dollars ($120,000).

4.1.3. The City shall not provide any additional compensation for any of Contractor’s costs associated with the performance of this Agreement.

4.2. Method of Payment

4.2.1. Invoices

The Contractor shall submit monthly invoices to:

Brian Hammond, Captain
Risk Management Section/Injury Prevention Unit
Los Angeles Fire Department
201 N. Figueroa Street, Suite 1250
Los Angeles, California 90012

The invoice must contain the following:

a. Name and address of Contractor;
b. Name and address of the Fire Department;
c. Date of the invoice and period covered;
d. Reference to the contract number;
e. Description of the completed task and the number of hours used for each task;
f. Payment terms, total due, and due date;
g. Certification by the Contractor;
h. Discounts and terms (if applicable), and
i. Remittance address (if different from billing address).

4.2.2. The City will make payment to the Contractor for the services performed after receipt and approval of the invoices by the City’s Representative. The City will not unreasonably withhold approval of invoices. In the event any invoice is not approved, the City’s Representative will immediately send a notice to the Contractor setting forth therein the reason(s) said invoice was not approved. Upon receipt of such notice, the Contractor may re-invoice the City for the accepted portion of the invoice or cure the defect identified in the City Representative’s notice. The City will pay the revised invoice as soon as practical after its submission. If the City’s Representative contests all or a portion of the invoice, the City’s
Representative and the Contractor will use their best efforts to resolve the disputed portion or portions of the invoice.

4.2.3. Failure to adhere to these policies may result in nonpayment or non-approval of demands, pursuant to Charter Section 262(a), which requires the Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and approve demands before they are drawn on the Treasury.

4.2.4. The Contractor shall notify the LAFD within ten (10) business days when 80% of the maximum compensation has been reached. Notice must be sent to the address listed per this agreement.

5.0 DATA MANAGEMENT

5.1 Confidentiality

All data, documents, records, recorded testimony, audiotapes, videotapes, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted orally, in writing, or by any other media to Contractor by the City and other documents to which the Contractor has access during the term of this Agreement are confidential information ("Confidential Information").

The Contractor agrees that both during and after the term of this Agreement, City's Confidential Information shall be considered and kept as the private and privileged records of the City and will not be divulged to any person, firm, corporation, or other entity except on the prior direct written authorization of the City.

The Contractor shall ensure that each worker sent on an assignment under this Agreement has executed a Confidentiality Agreement prior to commencing any such assignment. Contractor shall provide the signed Confidentiality Agreement to the City prior to all workers commencing any assignment. The Confidentiality Agreement to be used is attached hereto as Exhibit A. The Contractor is responsible for ensuring compliance of all workers with the Confidentiality Agreement.

5.2 Data Ownership

As between the parties, City is the sole and exclusive owner of all data and information provided to Contractor by or on behalf of City pursuant to this Agreement and any and all updates or modifications thereto or derivatives thereof made by Contractor ("City Data"), and all intellectual property rights in
the foregoing, whether or not provided to any other party under this Agreement. City Data is Confidential Information for the purposes of this Agreement. Contractor shall not use City Data for any purpose other than that of rendering the services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit City Data. Contractor shall not possess or assert any lien or other right against or to City Data. City may request an export of City Data stored within the systems or held by Contractor in any form or format at no charge to City.

Subject to the restrictions articulated elsewhere in this Agreement, City grants Contractor a non-transferable, non-exclusive, terminable at-will license, solely for the term of this Agreement, to use City Data solely for purposes of performing the services pursuant to this Agreement for City’s benefit.

5.3 Data Protection

5.3.1 Contractor shall use best efforts, but in no event less than information security industry best practices, to prevent unauthorized use, disclosure, or exposure of City Data. To this end, Contractor shall safeguard the confidentiality, integrity, and availability of City Data.

5.3.2 Contractor shall implement and maintain appropriate administrative, technical, and organization security measures to safeguard against unauthorized access, disclosure, destruction, or theft of City Data. Such security measures shall also be in accordance with recognized industry best practices and the standard of care imposed by state and federal laws and regulations relating to the protection of such information.

5.3.3 Unless otherwise expressly agreed to by City in writing, Contractor shall encrypt all City Data at rest and in transit and limit access to only those individuals whose access is essential for performance of the services contemplated by this Agreement.

5.3.4 At no time may any content, City Data, or City processes be copied, disclosed, or retained by Contractor or any party related to Contractor for subsequent use in any transaction that does not include City.

5.4 Provision of Data

Upon termination of this Agreement for any cause or reason (including City’s breach), Contractor shall provide City with a copy of all City Data in Contractor’s possession in a mutually agreeable machine-readable format.
6.0 NON-EXCLUSIVE AGREEMENT

The City and Contractor understand and agree that this is a non-exclusive Agreement to provide services to the City and the LAFD and that the City or the LAFD reserve the right to enter into an agreement with other contractors to provide similar services during the term of this Agreement.

7.0 REPRESENTATIONS AND WARRANTIES

7.1 Responsibility to Provide Services in Accordance with Applicable Standards and Requirement to Possess All Valid Permits and Licenses

Contractor represents and warrants that the work performed hereunder shall be completed in a manner consistent with professional standards among those firms in Contractor’s profession, doing the same or similar work, under the same or similar circumstances. Contractor must possess and maintain valid licenses and permits required to perform the services described herein.

7.2 Compliance with Statutes and Regulations

Contractor, in the performance of this Agreement, shall comply with all applicable statutes, rules, regulations, and orders of the United States, the State of California, the County and City of Los Angeles, and any other jurisdiction in which it performs services pursuant to the Agreement. Contractor shall comply with new, amended, or revised laws, regulations, and procedures that apply to the performance of this Agreement.

8.0 CITY CONTRACTING REQUIREMENTS

8.1 Standard Provisions

By entering into this Agreement with the City, the Contractor agrees to abide by the Standard Provisions for City Contracts (Rev. 10/17) [v.3], attached hereto and incorporated herein as Exhibit B.

8.2 Disclosure of Border Wall Contracting Ordinance

Contractor shall comply with Los Angeles Administrative Code (“LAAC”) Section 10.50 et seq., “Disclosure of Border Wall Contracting Ordinance.” City may terminate this Agreement at any time if City determines the Contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts as defined in LAAC Section 10.50.1.
9.0 BUSINESS ASSOCIATE AGREEMENT

The LAFD is a Covered Healthcare Entity within the City organization, and in accordance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and to ensure the security of documents containing Protected Health Information (“PHI”), the Contractor by entering into this Agreement with the LAFD agrees to abide by the Business Associate Agreement (“BAA”), attached hereto and incorporated herein as Exhibit C.

10.0 ORDER OF PRECEDENCE

This Agreement, and any exhibits, attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire Agreement between the City and the Contractor. In the event of any inconsistency between the body of this Agreement and the exhibits and attachment, the order of precedence will be as follows:

1) This Agreement between the City of Los Angeles and Sean D. Higgs;  
2) Exhibit B – Standard Provisions for City Contracts (Rev. 10/17)[v.3];  
3) Exhibit C – Business Associate Agreement (HIPAA); and
4) Any other exhibit or attachment in the order in which they are attached.

11.0 ENTIRE AGREEMENT

This Agreement contains the full and complete Agreement between the parties. No verbal agreement or conversation with any officer or employee of either party will affect or modify any of the terms and conditions of this Agreement.

12.0 NUMBER OF PAGES AND ATTACHMENTS

This Agreement is executed in three (3) triplicate originals, each of which is deemed to be an original. This Agreement includes nine (9) pages and three (3) Exhibits, which constitute the entire understanding and agreement of the parties.
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

THE CITY OF LOS ANGELES         SEAN D. HIGGS

By: ____________________________       By: ____________________________
   Ralph M. Terrazas
   Fire Chief

Date: ____________________________       Date: ____________________________

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

By: ____________________________
   Samuel Petty
   Deputy City Attorney

Date: ____________________________

ATTEST:
HOLLY L. WOLCOTT, City Clerk

By: ____________________________
   Deputy City Clerk

Date: ____________________________

City Agreement Number: ____________________________
EXHIBIT A

CONFIDENTIALITY AGREEMENT
CONTRACTOR/EMPLOYEE ACKNOWLEDGMENT
AND CONFIDENTIALITY AGREEMENT

I understand that my employer, ________________________________, (hereinafter referred to as "Contractor") has entered into a contract with the City of Los Angeles (hereinafter referred to as "City") to provide various services to the City (hereinafter referred to as the “Agreement”).

Employee Acknowledgment

I understand that the Contractor is my sole employer for purposes of the Agreement between the Contractor and the City.

I understand and agree that I am not an employee of the City for any purpose and that I do not have and will not acquire any rights or benefits of any kind from the City during the period of this employment.

I understand and agree that I do not have and will not acquire any rights or benefits pursuant to any agreement between the Contractor and the City.

Confidentiality Agreement

As an employee of the Contractor, I may be involved with work pertaining to City services, and if so, I may have access to confidential information pertaining to persons or entities represented by the City Attorney’s Office or by a designated private law firm thereby creating a confidential attorney/client relationship between the City Attorney’s Office or the private law firm and its client. All personnel who perform services pursuant to the Agreement between the Contractor and the City are bound by that confidential relationship, which is set forth in the California Evidence Code, Article 3, and the California Code of Professional Responsibility. In addition, the City has a legal obligation to protect all confidential information in its possession, especially medical information and other information that is protected by the attorney/client privilege.

I hereby agree that I will not divulge to any unauthorized person, information obtained while performing work pursuant to the Agreement between the Contractor and the City.

I agree to forward all requests for the release of information received by me to my immediate supervisor.

Further, I understand that I am obligated to maintain the confidentiality of medical information on examinees receiving services pursuant to the Agreement between the Contractor and the City. I understand that I am obligated to maintain the confidentiality of this information at all times, both at work and off duty, in accordance with all State and Federal statutes on confidentiality of medical information.

I acknowledge that violation of this Acknowledgment and Confidentiality Agreement may subject me to civil and/or criminal action and that the City of Los Angeles will seek all possible legal redress.

Signature ___________________________ Date ___________________________

Printed Name _________________________ Position/Title ___________________________
EXHIBIT B

STANDARD PROVISIONS FOR CITY CONTRACTS
(REV 10/17) [v3]
# STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against CITY or CONTRACTOR. The word "CONTRACTOR" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one CONTRACTOR, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party’s performance shall comply with all applicable laws of the United States of America, the State of California, and CITY, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. CONTRACTOR shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to CONTRACTOR.

In any action arising out of this Contract, CONTRACTOR consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

A. This Contract has been signed on behalf of CONTRACTOR by the person or persons authorized to bind CONTRACTOR;

B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;

C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and

D. This Contract has been signed on behalf of CITY by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.
PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of CONTRACTOR shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both CONTRACTOR and Subcontractor, and without any fault or negligence of either of them. In such case, CONTRACTOR shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit CONTRACTOR to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event CONTRACTOR'S delay or failure to perform arises out of a Force Majeure Event, CONTRACTOR agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.
PSC-8. Suspension

At CITY'S sole discretion, CITY may suspend any or all services provided under this Contract by providing CONTRACTOR with written notice of suspension. Upon receipt of the notice of suspension, CONTRACTOR shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to CITY until CITY gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

CITY may terminate this Contract for CITY’S convenience at any time by providing CONTRACTOR thirty days written notice. Upon receipt of the notice of termination, CONTRACTOR shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. CITY shall pay CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONTRACTOR to effect the termination. Thereafter, CONTRACTOR shall have no further claims against CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights CITY is entitled to, shall become CITY property upon the date of the termination. CONTRACTOR agrees to execute any documents necessary for CITY to perfect, memorialize, or record CITY’S ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, if CONTRACTOR fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, CITY may give CONTRACTOR written notice of the default. CITY’S default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of CITY. Additionally, CITY’S default notice may offer CONTRACTOR an opportunity to provide CITY with a plan to cure the default, which shall be submitted to CITY within the time period allowed by CITY. At CITY’S sole discretion, CITY may accept or reject CONTRACTOR’S plan. If the default cannot be cured or if CONTRACTOR fails to cure within the period allowed by CITY, then CITY may terminate this Contract due to CONTRACTOR’S breach of this Contract.

2. If the default under this Contract is due to CONTRACTOR’S failure to maintain the insurance required under this Contract, CONTRACTOR shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor’s obligation to suspend performance of
services. CONTRACTOR shall not recommence performance until CONTRACTOR is fully insured and in compliance with CITY'S requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then CITY may immediately terminate this Contract.

4. If CONTRACTOR engages in any dishonest conduct related to the performance or administration of this Contract or violates CITY'S laws, regulations or policies relating to lobbying, then CITY may immediately terminate this Contract.

5. Acts of Moral Turpitude

a. CONTRACTOR shall immediately notify CITY if CONTRACTOR or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").

b. If CONTRACTOR or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, CITY may immediately terminate this Contract.

c. If CONTRACTOR or a Key Person is charged with or indicted for an Act of Moral Turpitude, CITY may terminate this Contract after providing CONTRACTOR an opportunity to present evidence of CONTRACTOR'S ability to perform under the terms of this Contract.

d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.
e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of CONTRACTOR.

6. In the event CITY terminates this Contract as provided in this section, CITY may procure, upon such terms and in the manner as CITY may deem appropriate, services similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to CITY for all of its costs and damages, including, but not limited to, any excess costs for such services.

7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.

8. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

C. In the event that this Contract is terminated, CONTRACTOR shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of CITY. CONTRACTOR shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of CITY.

PSC-11. Contractor’s Personnel

Unless otherwise approved by CITY, CONTRACTOR shall use its own employees to perform the services described in this Contract. CITY has the right to review and approve any personnel who are assigned to work under this Contract. CONTRACTOR shall remove personnel from performing work under this Contract if requested to do so by CITY.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of CITY. If CITY permits the use of Subcontractors, CONTRACTOR shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. CITY has the right to approve CONTRACTOR’s Subcontractors, and CITY reserves the right to request replacement of any
Subcontractor. CITY does not have any obligation to pay CONTRACTOR'S Subcontractors, and nothing herein creates any privity of contract between CITY and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of CITY:

A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or

B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for CONTRACTOR'S performance of this Contract. CONTRACTOR shall immediately notify CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to CONTRACTOR'S performance of this Contract.

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produced by CONTRACTOR hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.


For the duration of this Contract, CONTRACTOR shall maintain valid Business Tax Registration Certificate(s) as required by CITY'S Business Tax Ordinance, Section 21.00 et seq. of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

PSC-16. Retention of Records, Audit and Reports

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by CITY. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by CITY, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized CITY personnel or CITY'S representatives at any time. CONTRACTOR shall provide any reports requested by CITY regarding
performance of this Contract. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, CONTRACTOR may, upon CITY'S written approval, submit the required information to CITY in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17.  Bonds

All bonds required by CITY shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 et seq., as amended from to time.

PSC-18.  Indemnification

Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, CONTRACTOR shall defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including CONTRACTOR'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by CONTRACTOR, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-19.  Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the CITY, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONTRACTOR, or its Subcontractors, in performing the work under this Contract; or (2) as a result of CITY'S actual or intended use of any Work Product (as defined in PSC-21) furnished by CONTRACTOR, or its Subcontractors, under this Contract. The rights and remedies of CITY provided in this section shall not be exclusive
and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

**PSC-20. Intellectual Property Warranty**

**CONTRACTOR** represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party’s intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

**PSC-21. Ownership and License**

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a “Work Product”; collectively “Work Products”) shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY**’s ownership of rights provided herein.

**CONTRACTOR** agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

**CONTRACTOR** shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY**’s ownership and license rights of all Work Products are preserved and protected as intended herein.
PSC-22. Data Protection

A. CONTRACTOR shall protect, using the most secure means and technology that is commercially available, CITY-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). CONTRACTOR shall notify CITY in writing as soon as reasonably feasible, and in any event within twenty-four hours, of CONTRACTOR'S discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. CONTRACTOR shall begin remediation immediately. CONTRACTOR shall provide daily updates, or more frequently if required by CITY, regarding findings and actions performed by CONTRACTOR until the Data Breach or Security Incident has been effectively resolved to CITY’S satisfaction. CONTRACTOR shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with CITY. At CITY’S sole discretion, CITY and its authorized agents shall have the right to lead or participate in the investigation. CONTRACTOR shall cooperate fully with CITY, its agents and law enforcement.

B. If CITY is subject to liability for any Data Breach or Security Incident, then CONTRACTOR shall fully indemnify and hold harmless CITY and defend against any resulting actions.

PSC-23. Insurance

During the term of this Contract and without limiting CONTRACTOR’S obligation to indemnify, hold harmless and defend CITY, CONTRACTOR shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to CITY’S requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. CONTRACTOR shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-24. Best Terms

Throughout the term of this Contract, CONTRACTOR, shall offer CITY the best terms, prices, and discounts that are offered to any of CONTRACTOR’S customers for similar goods and services provided under this Contract.
PSC-25. Warranty and Responsibility of Contractor

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within CONTRACTOR'S profession, doing the same or similar work under the same or similar circumstances.

PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

A. CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and CITY. In performing this Contract, CONTRACTOR shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person’s race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.

B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.

C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the “Equal Employment Practices” provisions of this Contract.

D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the “Affirmative Action Program” provisions of this Contract.

Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, CONTRACTOR shall fully comply with all applicable State and Federal employment reporting requirements. Failure of CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of CONTRACTOR to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this Contract. Failure of CONTRACTOR or principal owner to cure
the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 et seq., as amended from time to time. CONTRACTOR further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 et seq., as amended from time to time. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:


B. CONTRACTOR shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;

C. CONTRACTOR shall provide reasonable accommodation upon request to ensure equal access to CITY-funded programs, services and activities;

D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and

E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that CITY is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.
PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 et seq., as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, CONTRACTOR shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. CONTRACTOR shall utilize the Business Assistance Virtual Network (“BAVN”) at https://www.labavn.org/, to perform and document outreach to Minority, Women, and Other Business Enterprises. CONTRACTOR shall perform subcontractor outreach activities through BAVN. CONTRACTOR shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall CONTRACTOR reduce their level of effort, without prior written approval of CITY.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 et seq., as amended from time to time. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 et seq., as amended from time to time. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 et seq., as amended from time to time. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with CITY for goods and services estimated at $1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at $100,000 or more and requires approval by an elected CITY office, CONTRACTOR, CONTRACTOR’S principals, and CONTRACTOR’S Subcontractors expected to receive at least $100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)
shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles CITY to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected CITY officials or candidates for elected CITY office for twelve months after this Contract is signed. Additionally, a CONTRACTOR subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any CONTRACTOR subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least $100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # ______________. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“CITY”) officials and candidates for elected CITY office for twelve months after the CITY contract is signed. You are required to provide the names and contact information of your principals to the CONTRACTOR and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications

CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 et seq., as amended from time to time. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

PSC-39. Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for CITY to comply with its governing legal requirements, CITY shall have no obligation to make any payments to CONTRACTOR unless CITY shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. CONTRACTOR agrees that any services provided by CONTRACTOR, purchases made by CONTRACTOR or expenses incurred by CONTRACTOR in excess of the appropriation(s) shall be free and without charge to CITY and CITY shall have no obligation to pay for the services, purchases or expenses. CONTRACTOR shall have no obligation to provide any services,
provide any equipment or incur any expenses in excess of the appropriated amount(s) until CITY appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to Customers. CONTRACTOR also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, CONTRACTOR shall verify proper truncation of receipts in compliance with FACTA.

PSC-41. Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, CONTRACTOR shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by CITY. CONTRACTOR is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of CONTRACTOR working on premises to pass a fingerprint and background check through the California Department of Justice at CONTRACTOR'S sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to CONTRACTOR by CITY may create a possessory interest. CONTRACTOR agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, CONTRACTOR shall pay the property tax. CONTRACTOR acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.
PSC-43. Confidentiality

All documents, information and materials provided to CONTRACTOR by CITY or developed by CONTRACTOR pursuant to this Contract (collectively “Confidential Information”) are confidential. CONTRACTOR shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by CITY or as required by law. CONTRACTOR shall immediately notify CITY of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.
EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

1. Additional Insured/Loss Payee. The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY’S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.

2. Notice of Cancellation. All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

3. Primary Coverage. CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY’S program shall be excess of this insurance and non-contributing.

4. Modification of Coverage. The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

5. Failure to Procure Insurance. All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR’S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY’S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

6. Workers’ Compensation. By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 et seq., of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake
self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

7. **California Licensee.** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. **Aggregate Limits/Impairment.** If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY’S protection are allowed without the CITY’S prior written consent.

9. **Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
# Required Insurance and Minimum Limits

**Name:** Los Angeles Fire Department  
**Date:** 11/5/2019  
**Agreement/Reference:** Sean D. Higgs - Certified Athletic Trainer Services

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

## Limits

<table>
<thead>
<tr>
<th>Coverage</th>
<th>WC</th>
<th>Statutory</th>
<th>EL</th>
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</thead>
<tbody>
<tr>
<td>Workers' Compensation (WC) and Employer's Liability (EL)</td>
<td></td>
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<td>1,000,000</td>
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<tr>
<td>Waiver of Subrogation in favor of City</td>
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<td>Longshore &amp; Harbor Workers</td>
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<td>Jones Act</td>
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<td>General Liability</td>
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<td>Products/Completed Operations</td>
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<td>Fire Legal Liability</td>
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<tr>
<td>Sexual Misconduct</td>
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<tr>
<td><strong>Automobile Liability</strong> (for any and all vehicles used for this contract, other than commuting to/from work)</td>
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<tr>
<td><strong>Professional Liability</strong> (Errors and Omissions)</td>
<td>1,000,000</td>
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<tr>
<td>Discovery Period 12 month extended reporting period</td>
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<tr>
<td><strong>Property Insurance</strong> (to cover replacement cost of building - as determined by insurance company)</td>
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<tr>
<td>All Risk Coverage</td>
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<tr>
<td>Flood</td>
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<td>Earthquake</td>
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<tr>
<td>Boiler and Machinery</td>
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<tr>
<td>Builder's Risk</td>
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<tr>
<td><strong>Surety Bonds - Performance and Payment (Labor and Materials) Bonds</strong></td>
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<tr>
<td><strong>Crime Insurance</strong></td>
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</table>

Other: **General Notes:**

1. If a contractor has no employees and decides to not cover herself/himself for workers' compensation, please complete the form entitled "Request For Waiver Of Workers' Compensation Insurance Requirement" located at: http://cap.lacity.org/risk/InsuranceForms.htm

2. In the absence of imposed auto liability insurance requirements all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.
EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT (HIPAA)
This Business Associate Agreement (the “Agreement”), is made as of the ____ day of __________, 2020, (the “Effective Date”), by and between the City of Los Angeles, (a designated “Hybrid Entity” by and through its Fire Department (“LAFD,” a designated “Health Care Component” of “Hybrid Entity” City of Los Angeles) (jointly “Covered Entity”) and Sean D. Higgs (the “Business Associate”) (collectively the “Parties”) to comply with the privacy and security standards required under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), adopted by the U.S. Department of Health and Human Services and as amended January 25, 2013, [45 C.F.R. Parts 160, 162 and 164; Volume 78 Fed. Reg. No. 17, Pages 5566 through 5702, January 23, 2013] and, in order to satisfy the electronic storage requirements of the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009 (hereinafter referred to as “HITECH”), and any applicable state confidentiality laws.

RECITALS

WHEREAS, Business Associate (“BA”) will provide certified athletic trainer services to the Covered Entity (“CE”) in the development and implementation of pilot program called the Early Intervention Treatment Program (“Program”) in order to provide early symptom treatment intervention to firefighters for minor aches and pains before these medical issues become more serious, and result in workers compensation claims;

WHEREAS, the CE and BA have entered into a Contract under which the CE will need to disclose to BA certain “Protected Health Information” (“PHI”) that is subject to protection under HIPAA and HITECH;

WHEREAS, HIPAA requires that CE receive adequate assurances that BA will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of CE;

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. DEFINITIONS

Terms used in this Agreement, but not otherwise defined, shall have the
meaning ascribed by the HIPAA Final Regulations and the HITECH Act, as amended as of January 23, 2013.

1. **Breach** means the acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart E of 45 C.F.R. Part 164.

2. **Business Associate** ("BA") shall have the meaning ascribed in 45 C.F.R. § 160.103 and refers to Sean D. Higgs for purposes of this Agreement.

3. **Contract** means Los Angeles City Contract Number ___________ and all amendments by and between the City of Los Angeles ("City") and Sean D. Higgs which includes, but is not limited to, the performance of activities related to certified athletic trainer services.

4. **Covered Entity** ("CE") means the City of Los Angeles, (a designated "Hybrid Covered Entity" by and through its Fire Department, a designated “Health Care Component” of “Hybrid Entity” City of Los Angeles).

5. **Designated Record Set** means a group of records, including, but not limited to, digital, photographic and/or video materials, maintained by or for a Covered Entity that are: (i) medical records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record system maintained by or for a health plan; and/or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about individuals. For purposes of this definition, the term “record” means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a Covered Entity.

6. **Health Care Component** ("HCC") means those portions of the Hybrid Entity that perform HIPAA-related activities. The Los Angeles Fire Department (LAFD) became a HCC by the Los Angeles City Council action which adopted the recommendation of the Personnel Committee meeting on July 30, 2010 [Council File No. 10-1181] or as modified [Council File No. R3-0240; August 16, 2013].

7. **HITECH Act** ("HITECH") means the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act, and any amendments, regulations, rules and guidance issued thereto and the relevant dates for compliance.

8. **HIPAA Final Regulations** means 45 C.F.R. Parts 160, 162 and 164 as amended on January 23, 2013 and effective on March 23, 2013 but only to the extent it applies to a Covered Entity, Hybrid Entity and/or Business
9. **Hybrid Entity** ("HE") means, for purposes of this Agreement, the City of Los Angeles, a single legal municipal entity that is (i) a Covered Entity; (ii) whose business activities include both covered and non-covered HIPAA functions; and (iii) that has designated its LAFD, along with other portions of the City of Los Angeles, as a HHCs pursuant to 45 C.F.R. § 160.103.

10. **Individual** means the person who is the subject of the Protected Health Information as defined in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 502(g).

11. **Protected Health Information** ("PHI") means the Individually Identifiable Health Information ("IIHI") described in 45 C.F.R. § 160.103 that is transmitted electronically, maintained electronically, or transmitted or maintained in any other form or medium.

12. **Required by Law** means mandate contained in law that compels a use or disclosure of PHI under 45 C.F.R. § 164.512(a) (1) and (2).

13. **Secretary** means the Secretary of the Department of Health and Human Services or their designee under 45 C.F.R. § 160.103.

14. **Security Incident** any use or disclosure of information not provided for by this “Agreement” of which the BA becomes aware, including breaches of unsecured protected health information as defined by 45 C.F.R. § 164.402.

15. **Subcontractor** means a person or entity that, creates, receives, maintains or transmits protected health information on behalf of the business associate. (45 C.F.R. 160.103(3)(iii))

### B. DISCLOSURE OF PHI TO BUSINESS ASSOCIATE

In connection with the services provided by BA to or on behalf of CE, described in this Agreement, CE may disclose PHI to BA for the purpose of enabling the BA to engage in certified athletic trainer services. These activities include, but are not limited to, evaluating LAFD members’ injuries, developing individualized and group treatment and corrective exercise plans, managing the Program’s activities and associated equipment, and collecting data for use in determining the Program’s effectiveness. At no time shall BA use or disclose PHI or other related documents to any 3rd party.

BA shall comply with its obligations under this Agreement and with all
obligations of a BA under HIPAA, HITECH, and other related laws and any implementing regulations, as they exist at the time this Agreement is executed and as they are amended, for so long as this Agreement is in place. Specifically, the BA will comply with all the obligations and assume the liability for failure to do so as provided for in the Final Rules reflected in the Federal Register, Vol. 78, No. 17, commencing at Page 5677, dated, January 25, 2013 which implements among other things Section 13401 of HITECH.

C. **OBLIGATIONS OF COVERED ENTITY**

1. CE shall notify BA of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CRF §164.520, to the extent that such limitation may affect BA’s use or disclosure of PHI.

2. CE shall notify BA of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect BA’s use or disclosure of PHI.

3. CE shall notify BA of any restriction to the use or disclosure of PHI that CE has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect BA’s use or disclosure of PHI.

4. CE shall not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA if done by CE. [45 C.F.R. §164.504(e)(2)(i)]

5. CE will make a determination as to whether a use or disclosure of PHI by BA is a Breach within the meaning of 45 C.F.R. 164.402 necessitating notification under 45 C.F.R. 164.404, 164.406 and 164.408.

D. **OBLIGATIONS OF BUSINESS ASSOCIATE**

BA agrees to comply with applicable federal and state privacy and security laws, specifically the provisions of the HIPAA Administrative Simplification to the extent applicable to business associates.

1. **Use and Disclosure of PHI.** Except as otherwise permitted by this Agreement or applicable law, BA shall not use or disclose PHI other than as permitted or required by the Agreement or as Required By Law, except as necessary to conduct the practices of the LAFD as described in this Agreement and the Contract to or on behalf of the CE. These activities may include the transmitting or receiving of PHI, as may be required from time to time, to other business associates or covered entities on behalf of CE. BA shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by CE. Provided, however, BA may use and disclose PHI as necessary for the proper
management and administration of BA, or to carry out its legal responsibilities. BA shall in such cases:

(a) Provide information to members of its workforce using or disclosing PHI regarding the confidentiality requirements of the HIPAA Final Rules and this Agreement;

(b) Obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (i) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (ii) the person or entity will notify BA of any instances of which it is aware in which confidentiality of the PHI has been breached;

(c) Notification to Covered Entity. Agree to notify the designated Privacy Officer of CE of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules within 72 hours of discovery of the improper use or disclosure. The determination as to whether a use or disclosure for a purpose not provided for by this Agreement is a Breach within the meaning of 45 C.F.R. 164.402 shall be determined by the CE using the criteria determined in 45 C.F.R. 164.402 (2)(i)-(iv) after BA notifies CE of the use or disclosure of the PHI;

(d) Breach Notification. BA agrees to follow 45 C.F.R.164.410 after first notifying CE of the use or disclosure not provided by this Agreement and CE makes a determination that a breach has occurred pursuant to paragraph C(5) of this Agreement; and

(c) For purposes of the Breach Notification provision in 45 C.F.R. 164.410, BA in this Agreement is not the agent of CE.

2. Data Aggregation. In the event that BA works for more than one covered entity, BA is not permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Administrative Simplification.

3. De-identified Information. BA may use and disclose de-identified health information if (i) the use is disclosed to CE in writing and permitted in writing by CE in its sole discretion and (ii) the de-identification is in compliance with 45 CFR §164.502(d), and the de-identified health information meets the standard and implementation specifications for de-identification under 45 CRF §164.514(a) and (b).
4. **Safeguards.** BA shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as required by law. BA shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI it creates, receives, maintains, or transmits on behalf of CE.

5. **Minimum Necessary.** BA shall attempt to ensure that all uses and disclosures of PHI which pertain to the billing or operations of the CE are subject to the principle of “minimum necessary use and disclosure,” i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed.

6. **Disclosure to Agents and Subcontractors.** If BA discloses PHI received from CE, to agents, including a subcontractor, BA shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to BA under this Agreement. BA shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of the CE. BA shall be liable to CE for any acts, failures or omissions of the agent or subcontractor in providing the services as if they were BA’s own acts, failures or omissions, to the extent permitted by law. BA further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.

7. **Individual Rights Regarding Designated Record Sets.** If BA maintains a Designated Record Set on behalf of CE, BA agrees as follows:

   (a) **Individual Right to Copy or Inspection.** BA agrees that if it maintains a Designated Record Set for CE that is not maintained by CE, it will, in the event any Individual delivers directly to BA a request for access to PHI, in order for CE to respond to such Individual, forward such request to CE in order to meet the requirements of 45 CFR §164.524(a)(1). Under the HIPAA Final Rules, CE is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. [45 C.F.R. § 164.524(b)(2).] BA agrees to make reasonable efforts to assist CE in meeting this deadline. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If CE maintains the requested records, CE, rather than BA shall permit access according to its policies and procedures implementing the HIPAA Administrative
Simplification.

(b) Individual Right to Amendment. BA agrees, if it maintains PHI in a Designated Record Set, to make the Designated Record Set available to CE for amendments to PHI pursuant to 45 CFR §164.526.

(c) Accounting of Disclosures. BA agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI in accordance with 45 CFR §164.528, and to make this information available to CE upon CE’s request, in order to allow CE to respond to an Individual's request for accounting of disclosures. Under the HIPAA Final Rules, CE is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. BA agrees to use its best efforts to assist CE in meeting this deadline. Such accounting must be provided without cost to the individual or CE if it is the first accounting requested by an individual within any 12 month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if BA informs the CE in advance of the fee and is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the six (6) years prior to the request (not including disclosures prior to the compliance date of the HIPAA Administrative Simplification and shall be provided for as long as BA maintains the PHI.

8. Internal Practices, Policies and Procedures. Except as otherwise specified herein, BA shall make available its internal practices, policies and procedures relating to the use and disclosure of PHI, received from or on behalf of CE to the Secretary or his or her agents for the purpose of determining CE’s compliance with the HIPAA Rules, or any other health oversight agency, or to CE. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by CE or the Secretary.

9. Notice of Privacy Practices. BA shall abide by the limitations of CE’s Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to CE’s Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which BA relied prior to receiving notice of such amended Notice.

10. Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual’s specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, BA shall, if it has notice of such revocation, expiration, or
invalidity, cease the use and disclosure of the Individual’s PHI except to the extent it has relied on such use or disclosure, or if an exception under the HIPAA Administrative Simplification expressly applies.

11. **Knowledge of HIPAA Rules.** BA agrees to review and understand the HIPAA Rules as it applies to BA, and to comply with the applicable requirements of the HIPAA Rule, as well as any applicable amendments.

12. **Security Incident.** BA agrees to immediately report to the CE any security incident of which BA becomes aware within 72 hours of discovery of the security incident.

E. **TERM AND TERMINATION**

1. **Term.** The Term of this Agreement shall be effective as of the Effective Date of the Contract, and shall terminate when all of the PHI provided by CE to BA, or created or received by BA on behalf of CE, is destroyed or returned to CE, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

2. **Termination for Cause.** Upon CE’s knowledge of a material breach by BA, CE shall either:

   (a) Provide an opportunity for BA to cure the breach or end the violation and terminate this Agreement and the Contract if BA does not cure the breach or end the violation within the time specified by CE;

   (b) Immediately terminate this Agreement and the Contract if BA has breached a material term of this Agreement and cure is not possible; or

   (c) If neither termination nor cure is feasible, CE shall report the violation to the Secretary.

3. **Effect of Termination.**

   (a) Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, BA shall return or destroy all PHI received from CE, or created or received by BA on behalf of CE. This provision shall apply to PHI that is in the possession of subcontractors or agents of BA. BA shall retain no copies of the PHI and shall confirm, in writing, to the CE that all PHI has been returned to the CE or destroyed and, state the method of destruction.

   (b) In the event that BA determines that returning or destroying the
PHI is infeasible, BA shall provide to CE written notification of the conditions that make return or destruction infeasible. Upon discovering that return or destruction of PHI is infeasible, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as BA maintains such PHI.

F. MISCELLANEOUS

1. Indemnification.

(a) To the extent permitted by law, BA agrees to indemnify and hold harmless CE from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney’s fees, defense costs, and equitable relief), for any damage or loss incurred by CE arising out of, resulting from, or attributable to any acts or omissions or other conduct of BA or its agents in connection with the performance of BA’s or its agents’ and/or subcontractor’s duties under this Agreement including and not limited to the cost of breach notification under Paragraph D.1.(d) of this Agreement. This indemnity shall not be construed to limit CE’s rights, if any, to common law indemnity.

(b) CE shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action described in F(1)(a) above, the costs and expenses of which shall be the responsibility of BA. CE shall provide BA with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist BA in establishing a defense to such action.

(c) These indemnities shall survive termination of this Agreement, and CE reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

2. Mitigation. If BA violates this Agreement or the HIPAA Rules, BA agrees to mitigate any damage caused by such breach, and bear any such related costs.

3. Rights of Proprietary Information. CE retains any and all rights to the proprietary information, confidential information, and PHI it releases to BA.

4. Survival. The respective rights and obligations of BA under Section (Effect of Termination) of this Agreement shall survive the termination of
5. Notices. Any notices pertaining to this Agreement, including breach “Notification to the Covered Entity” made pursuant to Paragraph D1(c) of this Agreement, shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party’s authorized representatives as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Covered Entity (for Breach Notification):

Alexandra Vázquez-Sherman (HIPAA Privacy Officer)
Fire Special Investigator
LAFD, Administrative Operations Bureau
Risk Management
200 N. Main Street, Suite 1890
Los Angeles, CA 90012
Tel: (213) 978-3873
Fax: (213) 978-3815

If to Covered Entity LAFD (For all other Matters)

Ralph Terrazas, Fire Chief
Los Angeles Fire Department
200 N. Main St., Room 1800
Los Angeles, California 90012
(213) 978-3838
(213) 978-3814 Fax

And:

S. Jenny Park, Fire Administrator
Los Angeles Fire Department
200 N. Main St., Room 1630
Los Angeles, California 90012
(213) 978-3731
(213) 978-3414 Fax

And:

If to Business Associate:
6. **Amendments.** This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow CE to comply with the requirements of the HIPAA Rules.

7. **Choice of Law.** This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of California, without regard to applicable conflict of laws principles.

8. **Assignment of Rights and Delegation of Duties.** This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary; however, CE retains the right to assign or delegate any of its rights or obligations hereunder to any City department or office in a manner consistent with the HIPAA Rules. Assignments made in violation of this provision are null and void.

9. **Nature of Agreement.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.

10. **No Waiver.** Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

11. **Equitable Relief.** Any disclosure of misappropriation of PHI by BA in violation of this Agreement will cause CE irreparable harm, the amount of which may be difficult to ascertain. BA therefore agrees that CE shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining BA from any such further disclosure or breach, and for such other relief as CE shall deem appropriate. Such rights are in addition
to any other remedies available to CE at law or in equity. BA expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by CE.

12. **Severability.** The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.

13. **No Third Party Beneficiaries.** Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.

14. **Headings.** The descriptive headings of the articles, sections, subsections of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

15. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits CE to comply with the HIPAA rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.

16. **Regulatory References.** A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

[Signature Page to Follow]
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

For: THE CITY OF LOS ANGELES

DATE: _______________________ By: _______________________

RALPH M. TERRAZAS
Fire Chief
Los Angeles Fire Department

For: CONTRACTOR

DATE: _______________________ By: _______________________

Sean D. Higgs

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: _______________________

Judith D. Thompson
Deputy City Attorney

DATE: _______________________

ATTESTED:

HOLLY L. WOLCOTT, City Clerk

By: _______________________

Deputy City Clerk

Agreement Number: __________