

LOS ANGELES FIRE DEPARTMENT



RONNIE R. VILLANUEVA
INTERIM FIRE CHIEF

October 14, 2025

BOARD OF FIRE COMMISSIONERS
FILE NO. 25-065

TO: Board of Fire Commissioners

FROM:  Ronnie R. Villanueva, Interim Fire Chief

SUBJECT: AGREEMENT WITH ELEVATE FITNESS SOLUTIONS, LLC FOR
CERTIFIED ATHLETIC TRAINER SERVICES (REQUEST FOR
PROPOSALS NO. 2025-038-001)

FINAL ACTION:	☐ Approved	☐ Approved w/Corrections	☐ Withdrawn
	☐ Denied	☐ Received & Filed	☐ Other

SUMMARY

The City of Los Angeles, through the Los Angeles Fire Department (LAFD), requires the services of a contractor who can provide Certified Athletic Trainer services in order to support the Injury Prevention Program.

In October 2020, the LAFD contracted for the services of a Certified Athletic Trainer to assist with the development and implementation of an Early Intervention Treatment Pilot Program. That program provided treatment to firefighters with minor aches and pains before they became more serious, with the goal of preventing minor medical issues from becoming Workers Compensation claims. The pilot program has since evolved into the Injury Prevention Program.

The term of the Agreement with Elevate Fitness Solutions, LLC will be for three (3) years, and for an amount not to exceed \$195,364 per year, subject to the availability of funds, for a maximum contract amount not to exceed \$586,092 during the three-year term.

RECOMMENDATIONS

That the Board:

1. Approve and authorize the Fire Chief to execute an Agreement with Elevate Fitness Solutions, LLC for certified athletic trainer services for a three-year term, commencing October 14, 2025, and terminating three years from that date, with an annual amount not to exceed \$195,364, for a maximum contract amount not to exceed \$586,092, subject to the availability of funding.

2. Transmit the Agreement to the Mayor for review and approval, in accordance with Executive Directive No. 3.

DISCUSSION

On May 30, 2025, the LAFD released a Request for Proposals (No. 2025-038-001) (RFP) for Certified Athletic Trainer Services in order to assist with the continued implementation of the Injury Prevention Program through a combination of knowledge and application of injury prevention and management, fitness tracking and development, and wellness education programs. The goals of the Injury Prevention Program is to treat first responders complaining of minor aches and pains in order to prevent more serious injuries escalating to Workers Compensation claims and time off from work.

The Certified Athletic Trainer is expected to provide the following services during station visits, office appointments, and virtual appointments where applicable:

- Evaluation/consultation for minor duty-related aches, pains, and musculoskeletal injuries that do not require a Workers Compensation claim.
- Injury prevention stretches, exercises, and education.
- Fitness education, assessment, and programming.
- Injury evaluation and rehabilitation for non-duty-related injuries.
- Mobility (flexibility) assessment.

In response to the RFP, four (4) proposals were received by the submittal deadline date of July 9, 2025. An Evaluation Committee, comprised of personnel from the LAFD reviewed and scored the eligible proposals based on the criteria below:

Evaluation Criteria	Maximum Points
Experience / Qualifications / Work History	50
Quality of the Work Plan	20
Proposed Rates / Fees	30
Total Possible Points	100

The evaluation scores of the four (4) proposers are as follows:

Proposer	Evaluation Score
Elevate Fitness Solutions, LLC	90
O2X Human Performance LLC	70
Roving Athletic Training Service, LLC dba Roving Sports Medicine Professionals	51
Work-Fit, LLC	49

Of the four (4) proposers, Elevate Fitness Solutions, LLC (Elevate Fitness) received the top score of 90 points. For the past five years, Sean Higgs, owner of Elevate Fitness, has served as the Certified Athletic Trainer for the LAFD's Injury Prevention Unit (IPU),

and has been integral to the successful development, implementation and transition of the Early Intervention Treatment Pilot Program into the current Injury Prevention Program. This program includes the following three tiers of service for LAFD's members:

1. Injury Prevention – Functional Movement Screen (FMS) testing to provide corrective movement exercises to reduce the chance of deficient movements developing into injuries. The FMS screen is now performed on recruit candidates during the Pre-Investigative Questionnaire process and during the recruit orientation to allow them to effectively address any concerns before starting the recruit academy, with the intent of increasing retention rates.
2. Early Symptom Intervention – Treatment of minor injuries before they manifest into chronic or significant injuries to decrease the possibility of Workers' Compensation claims.
3. Work Hardening/Return to Duty – Providing specific therapy and exercise programs to reduce the chance of reinjury for those who have been off duty for more than six months due to an injury and are transitioning back to full-duty status. The IPU plays an essential role in the Return to Work refresher program to increase the job readiness for members returning from long-term injuries and leaves of absence.

In addition, Mr. Higgs and the Injury Prevention Unit recently developed app-based fitness training programs for recruit firefighters, probationary firefighters, and incumbent firefighters. These programs align with the nationally-recognized Fire Service Joint Labor Management Wellness-Fitness Initiative, and the Certified Athletic Trainer plays a key role in the programs' successful implementation, monitoring, and evaluation. This contract supports (1) full-time Certified Athletic Trainer and (1) part-time Certified Athletic Trainer which will allow for dedicated time to focus on injury prevention, fitness, and wellness among recruit and probationary firefighters.

Mr. Higgs has over 25 years of clinical experience as a Certified Athletic Trainer and Physical Therapist Assistant. He has extensive experience differentiating between injuries that require medical referral and those that can be managed conservatively in-house, working with tactical athletes, and is experienced with the Functional Movement Screening Program which is used to evaluate mobility and stability patterns that may pose a risk of injury. Mr. Higgs' work experience involving first responders at other fire agencies includes the Orange County Fire Authority, City of Irvine and City of Newport Beach, as well as conducting annual wellness and fitness testing for firefighters at Santa Ana College. His expertise will greatly assist the LAFD in the management of the Injury Prevention Program.

It is recommended that the contract be awarded to Elevate Fitness Solutions, LLC as it was evaluated as the most qualified among the eligible proposers. The proposed term is for three (3) years, commencing on October 14, 2025, for an annual amount not to

exceed \$195,364, subject to the availability of funds, for a total contract amount not to exceed \$586,092 during the three-year term.

The attached Agreement has been reviewed and approved by the City Attorney as to legal form.

FISCAL IMPACT

There is no impact to the General Fund. Vocational Education Training (VET) funds (LAFD Special Training Fund, Fund 40J, Account 3840JB) has been approved to fund this contract.

Board Report prepared by Aaron Guggenheim, Battalion Chief, Wellness Section.

Attachment

AGREEMENT NO. _____

AGREEMENT BETWEEN

THE CITY OF LOS ANGELES

AND

ELEVATE FITNESS SOLUTIONS, LLC.

FOR

CERTIFIED ATHLETIC TRAINER SERVICES

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AGREEMENT NO. _____

**AGREEMENT BETWEEN
THE CITY OF LOS ANGELES
AND
ELEVATE FITNESS SOLUTIONS, LLC
FOR
CERTIFIED ATHLETIC TRAINER SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation ("City"), acting by and through the Los Angeles Fire Department ("Department" or "LAFD"), and Elevate Fitness Solutions, LLC, a California Limited Liability Company ("Contractor") (collectively, the "Parties," or individually, a "Party"), with reference to the following:

WHEREAS, since October 2020, the LAFD has developed an Injury Prevention Program ("Program") staffed with a Certified Athletic Trainer, providing services that include injury prevention, early symptom intervention, fitness education and mobility assessment; and

WHEREAS, in order to continue the Program, the LAFD requires the services of a contractor who has the knowledge and application of injury prevention and management, fitness tracking and development, and wellness education programs in order to treat first responders who have minor aches and pains from developing more serious injuries that could escalate to workers compensation claims and time off from work; 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 May 30, 2025, the LAFD issued a Request for Proposals (RFP) seeking a qualified certified athletic trainer to assist in the continued development and implementation of the 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 they received the highest score out of the four proposals that were evaluated; and

WHEREAS, the City desires to enter into an Agreement with the Contractor for certified athletic trainer services for a three (3) year term, for an amount not to exceed \$195,364 per year, for a maximum contract amount not to exceed \$583,092 during the three-year term, subject to the availability of funds.

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 – Elevate Fitness Solutions, LLC, 76 Mercantile Way, #815, Ladera Ranch, CA 92694

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 shall be given are as follows:

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

Fire Chief
Los Angeles Fire Department
200 N. Main Street, Room 1800
Los Angeles, California, 90012

With a copy to:

Battalion Chief
Wellness Section
Los Angeles Fire Department
200 N. Main St., Room 1890
Los Angeles, California, 90012

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

Sean D. Higgs, MS, ATC, PTA
Elevate Fitness Solutions, LLC
76 Mercantile Way, #815
Ladera Ranch, CA 92694

1.3. Formal notices, demands and communications to be given hereunder by either Party shall 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 shall be provided as described in this Agreement, within five (5) business days of said change. As used in this section, "business days" shall refer to the days the City is open to the public for business.

2.0 TERM OF THE AGREEMENT

- 2.1 The term of this Agreement shall commence on October 14, 2025, and shall terminate three (3) years from that date, unless otherwise terminated by the City as provided for in this Agreement.
- 2.2 Due to the need for Contractor's services to be provided continuously on an ongoing basis, Contractor may have provided services prior to the execution of this Agreement. To the extent that the Contractor's services were performed in accordance with the terms and conditions of this Agreement, those services are hereby ratified.

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 multiple treatment centers and associated equipment at the Downtown Training Center (Frank Hotchkin Memorial Training Center), located at 1700 Stadium Way, Los Angeles, California 90012, the Recruit Drill Tower at Fire Station 81, located at 14345 Arminta Street, Panorama City 91402, and temporary mobile treatment sites at fire stations.
- 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 intranet, classes, and fire station visits.
- 3.4. Perform Functional Movement Screen (FMS) testing, as well as create and educate 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.
- 3.6. Be available on-call for large incident emergency response recovery treatments.

3.7. Assist in the development of a Department-wide fitness and wellness program.

3.8. Other services to be provided:

- 3.8.1. Re-establish short and long-term goals for the IPU with collaboration from the Wellness Section.
- 3.8.2. Complete the Probationary Firefighter Fitness (PFF) pilot program and adjust the program accordingly based on member feedback.
- 3.8.3. Rollout the PFF program to all Probationary members and their Fire Stations.
- 3.8.4. Develop a Peer Fitness Program for the active members using NFPA Standard 1583 as a guideline.
- 3.8.5. Support the Annual Wellness Exam and help to increase member utilization, as well as, provide training to prepare for the Exam and assist members' who score sub-optimally.
- 3.8.6. Enhance fitness levels of LAFD Recruits to improve performance and reduce injuries.
- 3.8.7. Develop a member Return to Duty program for those that have been off-duty for a prolonged time period.
- 3.8.8. Expand member education and training on pertinent fitness and injury related topics relative to the Fire Service.
- 3.8.9. Expand and enhance the mobile services (including Fire Station and Drill Tower visits).
- 3.8.10. Collaborate with Workers Compensation and the Medical Liaison Unit to streamline and optimize healthcare services to LAFD members.
- 3.8.11. Enhance Fire Station visits to include the teaching and implementation of the "firefighters 10" (which includes strengthening, stability, and mobility exercises which have been research-proven to help prevent and improve common shoulder and low back injuries in Firefighters).
- 3.8.12. Integrate a fitness preparation program into the Wodify app that will prepare members for their Annual Wellness Exam.
- 3.8.13. Develop and build the Tactical Athlete mentality with the LAFD members.

4.0 PERSONNEL

The Contractor shall provide adequate employee supervision at all times, and shall oversee all work performed. The Contractor shall ensure that all employees, prior to beginning any work, are familiar with safe work practices, local rules and regulations, and Cal-OSHA standards. The Contractor shall ensure that any certification required by employees are kept on file and made available to the LAFD upon request.

5.0 COMPENSATION AND METHOD OF PAYMENT

5.1. Compensation

5.1.1. The compensation shall be based on the following fee schedule:

5.1.1.1. Full-Time Athletic Trainer

- \$47/hour x 40 hours/week x 52 weeks = \$97,760
- Employer expenses (medical benefits, taxes, insurance, retirement plan, etc.): \$97,760 x 4% = \$39,104
- Maximum total expenses: \$136,864

5.1.1.2. Part-Time Athletic Trainer

- \$45/hour x 20 hours/week x 52 weeks = \$46,800
- Employer expenses: \$46,800 x 25% = \$11,700
- Maximum total expenses: \$58,500

5.1.2. The maximum compensation for this Agreement shall not exceed One Hundred Ninety Five Thousand Three Hundred Sixty Four Dollars (\$195,364) per year for a total contract amount not to exceed Five Hundred Eighty Six Thousand Ninety Two Dollars (\$586,092), subject to the availability of funds, for the complete and satisfactory services under this Agreement during the three (3) year term.

5.1.3. The Contractor understands and agrees that execution of this Agreement does not guarantee that any or all of these funds shall be expended.

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

5.1.5. Notwithstanding any other provision in this Agreement, including any attachments incorporated therein, and in order for the City to comply with its governing legal requirements, the City shall have no obligation to make any payments to Contractor unless the City shall have first made an appropriation of funds equal to or in excess of its obligation to make any payment as provided in said Agreement. Contractor agrees that services provided by Contractor, purchases made by Contractor, or expenses incurred by Contractors in excess of said appropriation(s) shall be free and without charge to City and City shall have no obligation to pay for said 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 Agreement.

5.2. Method of Payment

5.2.1. Invoices

The Contractor shall submit monthly invoices to:

Kevin Smith, Fire Captain I
Wellness Section/Injury Prevention Unit

Los Angeles Fire Department
1700 Stadium Way, Room 106
Los Angeles, California, 90012

The LAFD shall approve invoices for payment only after all services described are completed to the satisfaction of the City, and upon presentation of a proper invoice from Contractor, which shall include the following information:

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

5.2.2. The City shall make payment to the Contractor for the services performed after receipt and approval of the invoices by the City's Representative or designee. The City shall not unreasonably withhold approval of invoices. In the event any invoice is not approved, the City's Representative or designee shall 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 notice from the City Representative or designee. The City shall pay the revised invoice as soon as practical after its submission. If the City's Representative or designee contests all or a portion of the invoice, the City's Representative or designee and the Contractor shall use their best efforts to resolve the disputed portion or portions of the invoice.

5.2.3. 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.

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

6.0 DATA MANAGEMENT

6.1 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 shall 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 and incorporated herein as Exhibit A. The Contractor is responsible for ensuring compliance of all workers with the Confidentiality Agreement.

6.2 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.

6.3 Data Protection

- 6.3.1 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.
- 6.3.2 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.
- 6.3.3 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.
- 6.3.4 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.

6.4 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.

7.0 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.

8.0 REPRESENTATIONS AND WARRANTIES

8.1 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 shall possess and maintain valid licenses and permits required to perform the services described herein.

8.2 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.

8.3 Authority to Contract and No Pending Litigation

The Contractor has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

9.0 CITY CONTRACTING REQUIREMENTS

9.1 Standard Provisions

By entering into this Agreement with the City, the Contractor agrees to abide by the Standard Provisions for City Contracts (Rev. 1/25 [v.2]), attached hereto and incorporated herein as Exhibit B.

9.2 Disclosure of Border Wall Contracting Ordinance

Unless otherwise exempt in accordance with the provisions of this Ordinance, this Agreement is subject to the Disclosure of Border Wall Contracting Ordinance, Section 10.50 of the Los Angeles Administrative Code, as may be amended from time to time. Contractor certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Agreement.

10.0 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.

11.0 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 shall be as follows:

- 1) This Agreement between the City of Los Angeles and Elevate Fitness Solutions, LLC;
- 2) Exhibit B – Standard Provisions for City Contracts (Rev. 1/25 [v.2]);
- 3) Exhibit C – Business Associate Agreement (HIPAA); and
- 4) Exhibit A – Confidentiality Agreement

12.0 ENTIRE AGREEMENT

This Agreement, and any attachments or documents incorporated herein by inclusion or reference, constitutes the full and complete Agreement between the Parties and supersedes any prior representation, understandings, communications, commitments, agreements, or proposals, oral or written. Any changes to this Agreement shall be in a written amendment, signed by the duly authorized representatives of both Parties. No verbal agreement or conversation with any officer or employee of either Party shall affect or modify any of the terms and conditions of this Agreement. The Parties acknowledge that they have read and understand the Agreement and had an opportunity to consult with counsel of their choosing. Neither Party shall be deemed the drafter of this Agreement. Ambiguities, if any, in this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions have been prepared by a particular Party.

13.0 COUNTERPARTS/NUMBER OF PAGES

This Agreement may be executed in one or more counterparts, and by the Parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The Parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures. This Agreement includes eleven (11) pages and three (3) Exhibits.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

**THE CITY OF LOS ANGELES,
a Municipal Corporation**

**ELEVATE FITNESS SOLUTIONS, LLC,
a California Limited Liability Company**

By signing below, the signatory attests that they have no personal, financial, beneficial or familial interest in this contract.

By: _____
Ronnie R. Villanueva
Fire Chief

By: _____
Sean D. Higgs, Owner
Elevate Fitness Solutions, LLC

Date: _____

Date: _____

**APPROVED AS TO FORM:
HYDEE FELDSTEIN SOTO, City Attorney**

By: _____
Stephanie Cao
Deputy City Attorney

Date: _____

**ATTEST:
PATRICE Y. LATTIMORE, City Clerk**

By: _____
Deputy City Clerk

Date: _____

*Approved signature methods for California corporations:

A. Two signatures: one the Chairman of the Board of Directors, President, or Vice President, and one of the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer. The signature of a single individual holding offices in each category is also acceptable.

Or

B. One signature of a corporate-designated individual together with a properly attested resolution of the Board of Directors or copy of the Bylaws authorizing the individual to sign.

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. 1/25 [v.2])

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.

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

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 time 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:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- 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 Regional Alliance Marketplace for Procurement ("RAMP") at <https://www.rampla.org/s/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through RAMP. **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, City Data (as that term is defined in PSC-22), and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively "Confidential Information") are confidential. **CONTRACTOR** shall not provide, and shall prohibit its employees and subcontractors from providing or disclosing, 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.

PSC-44. Contractor Data Reporting

If Contractor is a for-profit, privately owned business, Contractor shall, within 30 days of the effective date of the Contract and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the Contract), report the following information to City via the Regional Alliance Marketplace for Procurement ("RAMP") or via another method specified by City: Contractor's and any Subcontractor's annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner ("Contractor/Subcontractor Information"). Contractor shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by City.

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: Elevate Fitness Solutions, LLCDate: 12/18/2024Agreement/Reference: Certified Athletic Trainer Services RFP (2025)

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

☒ **Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)**
WC StatutoryEL \$1,000,000☒ Waiver of Subrogation in favor of City☐ Longshore & Harbor Workers☐ Jones Act
☒ **General Liability** At least \$2 million aggregate. City of Los Angeles must be named as an additional insured.
\$1,000,000☒ Products/Completed Operations☐ Sexual Misconduct☐ Fire Legal Liability☐☐ **Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work)
☒ **Professional Liability** (Errors and Omissions)
\$1,000,000Discovery Period 12 Months After Completion of Work or Date of Termination☐ **Property Insurance** (to cover replacement cost of building - as determined by insurance company)☐ All Risk Coverage☐ Boiler and Machinery☐ Flood☐ Builder's Risk☐ Earthquake☐☐ **Pollution Liability**☐☐ **Surety Bonds - Performance and Payment (Labor and Materials) Bonds**

100% of the contract price

☐ **Crime Insurance**Other: Submitted to Lauren Nakasuji at LAFD, December 18, 2024**Insurance certificates MUST be submitted on the City's KwikComply site: <https://kwikcomply.org/>**If contractor has no employees and wishes to have the workers' compensation requirement waived, please complete the "Request for Waiver of Workers' Compensation Insurance Requirement" form located at <http://cao.lacity.org/risk/InsuranceForms.htm> (and submit it to: cao.insurance.bonds@lacity.org)**No imposed automobile insurance-- contractor must comply with California automobile liability laws.

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT (HIPAA)

**BUSINESS ASSOCIATE AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES
AND
ELEVATE FITNESS SOLUTIONS, LLC**

This **Business Associate Agreement** ("Agreement"), is made as of the ____ day of _____, 2025, (the "Effective Date"), by and between Elevate Fitness Solutions, LLC, on behalf of itself and its subsidiaries and affiliates, (the "Business Associate") and the City of Los Angeles ("City"), by and through its Fire Department ("LAFD") (the "Covered Entity") (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"), (collectively HIPAA, HITECH and implementing regulations as amended hereinafter referred to as "HIPAA Rules") and any applicable state confidentiality laws.

RECITALS

WHEREAS, Business Associate will provide assistance with the LAFD's Injury Prevention Program through a combination of knowledge and application of injury prevention and management, fitness tracking and development, and wellness education programs;

WHEREAS, the Covered Entity and Business Associate have entered into the Contract under which the Covered Entity will need to disclose to Business Associate certain "Protected Health Information" ("PHI" as defined below) that is subject to protection under HIPAA and HITECH;

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

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 Final HIPAA Regulations and the HITECH Act, as amended as of January 23, 2013.

BUSINESS ASSOCIATE AGREEMENT

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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, subject to exceptions and exclusions in 45 C.F.R. §164.402.
2. **Business Associate** ("BA") shall have the meaning ascribed in 45 C.F.R. §160.103 and refers to Elevate Fitness Solutions, LLC for purposes of this Agreement.
3. **Contract** means Los Angeles City Contract Number _____ by and between the City of Los Angeles ("City") and Elevate Fitness Solutions, LLC, which includes performing the activities related to certified athletic trainer services.
4. **Covered Entity** ("CE") means the Los Angeles Fire Department ("LAFD"), a Health Care Component of the City of Los Angeles, a Hybrid Entity.
5. **Designated Record Set** means a group of records 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 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 Associate.
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 HCC 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. §160.502(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 the 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; restoring function and strength in firefighter-related biomechanical movements and workplace injuries; managing treatment centers and associated equipment, as well as temporary mobile treatment sites; creating educational content to be delivered across multiple platforms; perform Functional Movement Screen testing, and create and educate members on their individualized corrective exercise programs; collecting injury, treatment and recovery data for use in determining program effectiveness related to stated metric goals; being on call for large incident emergency response recovery treatments; and developing a Department-wide fitness and wellness program. 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

BUSINESS ASSOCIATE AGREEMENT

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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. Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
4. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by Covered Entity. [45 C.F.R. §164.504(e)(2)(i)]
5. Covered Entity shall make a determination as to whether a use or disclosure of Protected Health Information by Business Associate 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

Business Associate 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, Business Associate 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 Covered Entity. These activities include a review of selected records and 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 Covered Entity. Business Associate shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by Covered Entity. Provided, however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. Business Associate 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 Business Associates of any instances of which it is aware in which confidentiality of the PHI has been breached; and

(c) Notification to Covered Entity. Agree to notify the designated Privacy Officer of Covered Entity 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 Covered Entity using the criteria determined in 45 C.F.R. §164.402 (2)(i)-(iv) after Business Associate notifies Covered Entity of the use or disclosure of the Protected Health Information.

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

(e) For purposes of the Breach Notification provision in 45 C.F.R. §164.410, Business Associate in this Agreement is not the agent of Covered Entity.

2. Data Aggregation. In the event that Business Associate works for more than one Covered Entity, Business Associate is not permitted to use and disclose PHI for data aggregation purposes.

BUSINESS ASSOCIATE AGREEMENT

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3. De-identified Information. Business Associate may use and disclose de-identified health information if (i) the use is disclosed to Covered Entity in writing and permitted in writing by Covered Entity in its sole discretion and (ii) the de-identification is in compliance with 45 C.F.R. §164.502(d), and the de-identified health information meets the standard and implementation specifications for de-identification under 45 C.F.R. §164.514(a) and (b).
4. Safeguards. Business Associate 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. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI ("ePHI") it creates, receives, maintains, or transmits on behalf of Covered Entity.
5. Minimum Necessary. Business Associate shall attempt to ensure that all uses and disclosures of PHI which pertain to the billing or operations of the Covered Entity 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 Business Associate discloses PHI received from Covered Entity, to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions as applied to Business Associate under this Agreement. Business Associate 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 Covered Entity. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of the agent or subcontractor in providing the services as if they were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate 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 Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees as follows:
 - (a) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will, in the event any Individual delivers

directly to Business Associate a request for access to PHI, in order for Covered Entity to respond to such Individual, forward such request to Covered Entity in order to meet the requirements of 45 C.F.R. §164.524(a)(1). Under the HIPAA Final Rules, Covered Entity 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).] Business Associate agrees to make reasonable efforts to assist Covered Entity 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 Covered Entity maintains the requested records, Covered Entity, rather than Business Associate shall permit access according to its policies and procedures implementing the HIPAA Administrative Simplification.

(b) Individual Right to Amendment. Business Associate agrees, if it maintains PHI in a Designated Record Set, to make the Designated Record Set available to Covered Entity for amendments to PHI pursuant to 45 C.F.R. §164.526.

(c) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures. Under the HIPAA Final Rules, Covered Entity is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. Business Associate agrees to use its best efforts to assist Covered Entity in meeting this deadline. Such accounting must be provided without cost to the individual or Covered Entity 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 Business Associate informs the Covered Entity 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 Business Associate maintains the PHI).

8. Internal Practices, Policies and Procedures. Except as otherwise specified herein, Business Associate shall make available its internal practices, policies and procedures relating to the use and disclosure of PHI, received from or on behalf of Covered Entity to the Secretary or his or her agents for the purpose of determining Covered Entity's compliance with the

HIPAA Rules, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity or the Secretary.

9. Notice of Privacy Practices. Business Associate shall abide by the limitations of Covered Entity's Notice of Privacy Practices. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice of Privacy Practices; provided, however, that the amended Notice of Privacy Practices shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice of Privacy Practices.
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, Business Associate 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, of if an exception under the HIPAA Administrative Simplification expressly applies.
11. Knowledge of HIPAA Rules. Business Associate agrees to review and understand the HIPAA Rules as it applies to Business Associate, and to comply with the applicable requirements of the HIPAA Rule, as well as any applicable amendments.
12. Security Incident. Business Associate agrees to immediately report to the Covered Entity any security incident of which Business Associate 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 Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - (a) Provide an opportunity for Business Associate to cure the breach or

end the violation and terminate this Agreement and the Contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

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

(c) If neither termination nor cure is feasible, Covered Entity 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, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information and shall confirm, in writing, to the Covered Entity that all Protected Health Information has been returned to the Covered Entity or destroyed and the method of destruction.

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

(c) In the event that Business Associate goes bankrupt or otherwise stops operating, Business Associate shall return or destroy all Protected Health Information received from Covered Entity.

F. LIABILITY

1. Indemnification

(a) To the extent permitted by law, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any

BUSINESS ASSOCIATE AGREEMENT

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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 Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Business Associate or its agents in connection with the performance of Business Associate's or its agents' and/or subcontractor's duties under this Agreement. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

(b) Covered Entity 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 Business Associate. Covered Entity shall provide Business Associate with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist Business Associate in establishing a defense to such action.

(c) These indemnities shall survive termination of this Agreement, and Covered Entity 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 Business Associate violates this Agreement or the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach, and bear any such related costs.
3. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
4. Survival. The respective rights and obligations of Business Associate under Section E. 3 (Effect of Termination) of this Agreement shall survive the termination of this Agreement.
5. Notices. Any notices pertaining to 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):

Drew Steinberg (Public Safety Risk Manager/HIPAA Privacy Officer)
Los Angeles Fire Department

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Risk Management Section
201 N. Figueroa St., Rm. 1250
Los Angeles, CA 90012
(213) 202-9880

If to Covered Entity LAFD (For all other Matters)

Ronnie R. Villanueva, Fire Chief
Los Angeles Fire Department
200 N. Main St., Room 1800
Los Angeles, California 90012
(213) 978-3800

And:

Emilio Rodriguez, 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:

Sean Higgs, MS, ATC, PTA
Elevate Fitness Solutions, LLC
76 Mercantile Way #815
Ladera Ranch, CA 92694
(949) 280-7798

G. **MISCELLANEOUS**

1. The parties agree to take such action as is necessary to amend this BAA to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, ARRA, the HITECH Act, the HIPAA Rules, and any other applicable law.
2. The respective rights and obligations of Business Associate under Section 6 and Section 7 of this BAA shall survive the termination of this BAA.
3. This BAA shall be interpreted in the following manner:
 - (a) Any ambiguity shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules.

- (b) Any inconsistency between the BAA's provisions and the HIPAA Rules, including all amendments as interpreted by the United States Department of Health and Human Services ("HHS"), a court, or another regulatory agency with authority over the Parties, shall be interpreted according to the interpretation of the HHS, the court, or the regulatory agency.
- (c) Any provision of this BAA that differs from those required by the HIPAA Rules, but is nonetheless permitted by the HIPAA Rules, shall be adhered to as stated in this BAA.
4. This BAA constitutes the entire agreement between the parties related to the subject matter of this BAA, except to the extent that the underlying Contract imposes more stringent requirements related to the use and protection of the PHI upon Business Associate. This BAA supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written. This BAA may not be modified unless done so in writing and signed by a duly authorized representative of both parties. If any provision of this BAA, or a part thereof, is found to be invalid, the remaining provisions shall remain in effect.
 5. This BAA will be binding on the successors and assigns of the Covered Entity and the Business Associate. However, this BAA may not be assigned, in whole or in part, without the written consent of the other party. Any attempted assignment in violation of this provision shall be null and void.
 6. This BAA may be executed in two or more counterparts, each of which shall be deemed an original.
 7. Except to the extent preempted by federal law, this BAA shall be governed by and construed in accordance with the laws of the State of California, the same internal laws as that of the underlying Contract.
 8. 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 Covered Entity and Business Associate to comply with the requirements of the HIPAA Rules.
 9. Choice of Law. Unless preempted by HIPAA Rules, 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.
 10. 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, Covered Entity 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.

11. 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.
12. 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.
13. Equitable Relief. Any disclosure of misappropriation of PHI by Business Associate in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further disclosure or breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Business Associate 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 Covered Entity.
14. 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.
15. 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.

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16. 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.
17. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity 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.
18. Any inconsistency between this BAA's provisions and the HIPAA Rules, including all amendments, as interpreted by HHS, a court, or another regulatory agency with authority over the Parties, shall be interpreted according to the interpretation of HHS, the court, or the regulatory agency. Any provisions of this BAA that differs from those required by the HIPAA Rules, but is nonetheless permitted by the HIPAA Rules, shall be adhered to as stated in this BAA.
19. 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 ON NEXT PAGE]

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

**For: THE CITY OF LOS ANGELES,
A Municipal Corporation**

By signing below, the signatory attest that they have no personal, financial, beneficial or familial interest in this contract.

By: _____
Ronnie R. Villanueva
Fire Chief

Date: _____

**For: Elevate Fitness Solutions, LLC,
A California Limited Liability
Company**

By: _____
Sean D. Higgs, MS, ATC, PTA
Owner

Date: _____

**APPROVED AS TO FORM:
HYDEE FELDSTEIN SOTO, City Attorney**

By: _____
Samuel W. Petty
Deputy City Attorney

Date: _____

**ATTESTED:
PATRICE Y. LATTIMORE, City Clerk**

By: _____
Deputy City Clerk

Date: _____

NOTE: If Contractor is a California corporation, approved signature methods are:

A. Two signatures: One of the Chairman of the Board of Directors, President, or Vice President, and one of the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer. The signature of a single individual holding offices in each category is also acceptable.

Or

B. One signature of a corporate-designated individual together with a properly attested resolution of the Board of Directors or copy of the Bylaws authorizing the individual to sign.

Agreement Number: _____