

Attachment B



**PROFESSIONAL SERVICES AGREEMENT**

Contractor: FirstWatch Solutions, Inc.

Title: Syndromic Surveillance Software

City Contract Number \_\_\_\_\_

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## EXHIBITS

Exhibit A	Indemnification and Insurance Requirements
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Exhibit C	Certification Regarding Lobbying
Exhibit D	Certification Regarding Drug Free Workplace Requirements
Exhibit E	City Ethics Commission (CEC) Form 50
Exhibit F	Project Services
Exhibit F-1	FirstWatch Solutions, Inc. Software/Hardware Requirements
Exhibit F-2A	FirstWatch Solutions, Inc. System Maintenance Agreement
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Exhibit F-3	Pricing and Payment Schedule
Exhibit F-4	Business Associate Agreement (HIPAA)
Exhibit G	County Agreement



AGREEMENT NUMBER \_\_\_\_\_ OF CITY CONTRACTS  
BETWEEN  
THE CITY OF LOS ANGELES  
AND FIRSTWATCH SOLUTIONS, INC.

THIS AGREEMENT ("Agreement" or "Contract") is made and entered into by and between the City of Los Angeles, a municipal corporation ("City"), acting by and through its Los Angeles City Fire Department ("LAFD") and FirstWatch Solutions, Inc., a California corporation ("Contractor").

WITNESSETH

WHEREAS, Los Angeles County ("County") has been allocated funds ("Grant Funds") from the Federal Centers for Disease Control and Prevention ("CDC" and along with the County, collectively the "Grantor"), Catalog of Federal Domestic Assistance Number 93.069 and 93.074 (the "Grant"), a portion of which has been designated to upgrade local public health jurisdictional preparedness efforts in order to respond to acts of bioterrorism, outbreaks of infectious disease, and other public health threats and emergencies;; and

WHEREAS, LAFD provides emergency medical services within the County; and

WHEREAS, pursuant to a separate grant agreement between the City and the County (the "County Agreement"), the County distributed, or will distribute, Grant Funds to City to license software ("Software") from the Contractor that will allow real-time information to be shared by key personnel from LAFD and the County's Acute Communicable Disease Control Program, Bioterrorism Epidemiology and Surveillance Section, such grant agreement having been accepted by the Los Angeles City Council (C.F.#XX-XXXX, mm/dd/yyyy); and

WHEREAS, the City and the Contractor seek to execute this Agreement, wherein the Contractor will license to the City said Software, as authorized by the Los Angeles City Council and the Mayor (C.F.#XX-XXXX, mm/dd/yyyy); and

WHEREAS, the services to be provided herein are of a professional, expert, temporary, and occasional nature; and

WHEREAS, pursuant to Los Angeles City Charter Section 1022, the City Council or designee has determined that the work can be performed more economically or feasibly by independent contractors than by City employees

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and the mutual benefits to be derived therefrom, the City and the Contractor (each a "Party" and collectively, the "Parties") agree as follows:

## **I. INTRODUCTION**

### **§101. Parties to the Agreement**

The Parties to this Agreement are:

- A. The City of Los Angeles, a municipal corporation, having its principal office at 200 N. Main Street, Los Angeles, California 90012; and
- B. The Contractor, known as FirstWatch Solutions, Inc., a California Corporation, having its principal office at 322 Encinitas Boulevard, Suite #100, Encinitas, California 92024.

### **§102. Representatives of the Parties and Service of Notices**

- A. 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. The representative of the City of Los Angeles shall be, unless otherwise stated in this Agreement:

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

With copies to:

Kurt Sato, Director of Systems  
Management Information Systems Division  
Los Angeles Fire Department  
200 N. Main Street, Room 1680  
Los Angeles, CA 90012

- 2. The representative of the Contractor shall be:

Todd Stout, President  
FirstWatch Solutions, Inc.  
322 Encinitas Boulevard, Suite #100  
Encinitas, CA 92024

- B. 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.
- C. 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 given, in accordance with this section, within five (5) business

days of said change.

§103. Independent Party

The Contractor is acting hereunder as an independent party, and not as an agent or employee of the City. No employee of the Contractor is, or shall be, an employee of the City by virtue of this Agreement, and Contractor shall so inform each employee organization and each employee who is hired or retained under this Agreement. 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 the City by virtue of this Agreement.

§104. Conditions Precedent to Execution of This Agreement

Contractor shall provide copies of the following documents to the City, unless otherwise exempted.

- A. Proof of insurance as required by the City in accordance with Section 413 of this Agreement and attached hereto as Exhibit A and made a part hereof.
- B. Certification Regarding Ineligibility, Suspension and Debarment attached hereto as Exhibit B and made a part hereof. Contractor hereby certifies that said Certification so executed is true and correct as of the date of execution of this Agreement.
- C. Certification and Disclosure Regarding Lobbying attached hereto as Exhibit C and made a part hereof. Contractor hereby certifies that said Certification so executed is true and correct as of the date of execution of this Agreement. Contractor shall also file a Disclosure Form at the end of each calendar quarter in which there occurs any event requiring disclosure or which materially effects the accuracy of the information contained in any Disclosure Form previously filed by Contractor.
- D. Certification Regarding Drug Free Workplace Requirements attached hereto as Exhibit D and made a part hereof. Contractor hereby certifies that said Certification so executed is true and correct as of the date of execution of this Agreement.
- E. City Ethics Commission Form 50, attached hereto as Exhibit E and made a part hereof. Contractor hereby certifies that said Certification so executed is true and correct as of the date of execution of this Agreement.
- F. If the Contractor is an (1) individual who is a non-resident of the State of California or (2) an entity duly organized under the laws of a state other than the State of California, Contractor shall provide to the City a duly completed and executed California Form 590 (Withholding Exemption Certificate) from the Franchise Tax Board of the State of California for the applicable year of this Agreement in accordance with Section 18662 of the California Revenue and Taxation Code ("R&TC"). Contractor agrees that the absence of such completed and executed Form 590 for this Agreement shall result in the City withholding 7% of the compensation

paid to the Contractor under this Agreement in accordance with Section 18662 of the R&TC.

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## **II. TERM AND SERVICES TO BE PROVIDED**

### **§201. Time of Performance**

The term of this Agreement shall be from July 1, 2015 and end June 30, 2016 (the "Term"). Said Term is subject to the provisions herein. Performance shall not commence until the Contractor has obtained the City's approval of the insurance required in §413 herein.

### **§202. Services to be Provided by the Contractor**

The Contractor shall provide software licensing and support services as set forth in, and in accordance with, the services set forth in this §202, the Project Services as detailed in Exhibit F, and the collective documentation that comprises Exhibits F-1 through F-4. All work related to such services is subject to prior City approval in writing. Failure to receive approval may result in withholding compensation pursuant to §301.

Contractor shall capture dispatch data from LAFD's 9-1-1 dispatch data repository via a secure virtual private network (VPN) to VPN or Secure Sockets Layer (SSL) encrypted connection. The data captured by the Contractor will be stored in a secured database inside its firewall. The data will be accessible to authorized LAFD and County Health Department employees through a SSL connection similar to on-line banking transactions.

The data will include: date and time of call, problem/nature of call, call latitude/longitude, zip code, call disposition, incident city, and incident type and other fields as agreed to by both parties. Patient information, such as names, shall not be included. LAFD and County Health Department shall define forty (40) triggers or filters that will limit and focus the types of incidents tracked, for example, flu-like symptoms.

The data will be displayed on maps and charts showing geographic distributions of occurrences within the City's geographic boundaries. Only authorized LAFD and County Health Department employees, and others authorized by the City, will have access to the charts and maps.

City shall provide hardware and software as detailed in Exhibit F-1.

City and Contractor shall execute a First Watch Solutions, Inc. System Maintenance Agreement attached hereto as Exhibit F-2. Contractor shall provide to the City the services set forth under the Maintenance Agreement, and such services shall be deemed to be provided by Contractor under this Agreement and governed by the terms of this Agreement. **In the event of any conflict or ambiguity between the provisions of this Agreement and such Maintenance Agreement, the terms of this Agreement shall govern, and the City shall not be bound by any terms set forth in such Maintenance Agreement if such terms are not otherwise set forth in this Agreement.**

### **III. PAYMENT**

#### **§301. Payment of Grant Funds and Method of Payment**

- A. The City shall pay to the Contractor as compensation for complete and satisfactory performance of the terms of this Agreement, an amount not to exceed Sixty Seven Thousand Six Hundred Seventeen Dollars (\$67,617.00). The foregoing rate represents the total compensation to be paid by City to Contractor for all goods and services to be provided as designated by this Agreement, which shall also include all fees incurred and materials to be provided by Contractor.
- B. Payments to the Contractor shall be made in accordance with the schedule set forth in Exhibit F-3 when Contractor submits invoices for services rendered.
- C. Each invoice shall be submitted on Contractor's letterhead. The invoice shall be accompanied by a statement listing the services and deliverables completed for which the invoice is being submitted and include evidence of the completed services and deliverables. Funds shall not be released until the City has approved the work received. The City shall have a reasonable amount of time following the receipt of an invoice to notify Contractor in writing of any deficiencies in the work received. If the Contractor is not notified of deficiencies during this period, then the work is deemed to be approved. The City shall effect payment within a reasonable amount of time following receipt of an invoice that has been deemed to be approved in accordance with the terms of this Agreement.
- D. Contractor shall prepare, maintain and provide to the City payroll records, timesheets, receipts and any other supporting documentation necessary to fully and accurately support all invoices submitted by the Contractor for staffing services. All such supporting documentation shall satisfy applicable Federal, State and City audit and review standards and requirements.
- E. Notwithstanding Exhibit F-3, ten percent (10%) of the total compensation shall be withheld by the City until the Contractor has completed the requirements of this Agreement.
- F. It is understood that the City makes no commitment to fund this Agreement beyond the terms set herein. Funding for all periods of this Agreement is subject to the continuing availability of federal funds for this program to the City. The Contract may be terminated immediately upon written notice to the Contractor of a loss or reduction of federal grant funds.
- G. Invoices and supporting documentation shall be prepared at the sole expense and responsibility of the Contractor. The City will not compensate the Contractor for any costs incurred for invoice or supporting document preparation. The City may request, in writing, changes to the content and format of the invoice and supporting documentation at any



time. The City reserves the right to request additional supporting documentation to substantiate costs at any time. All invoices must be signed by an officer of the Contractor under penalty of perjury that the information submitted is true and correct.

- H. Contractor has offered the City discounted terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Agreement which meet the discount terms. Contractor warrants that any applicable discounts have been included in the costs to the City in this Agreement and 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.
- I. It is understood that the Contractor will not have access to Protected Health Information (PHI) that is under the control of the City. However, there exists the possibility that there may be times the Contractor will be exposed or provided PHI data in the course of system maintenance. To the extent that the Contractor does have access to PHI, the Contractor agrees to abide by Section 423 of this agreement and the terms and conditions set forth in the Business Associate Agreement between the City and the Contractor, which is incorporated herein as Exhibit F-4.

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#### **IV. STANDARD PROVISIONS**

##### **§401. Construction of Provisions and Titles Herein**

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

##### **§402. Applicable Law, Interpretation and Enforcement**

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the County and City of Los Angeles, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Agreement shall be enforced and interpreted under the laws of the State of California and the City of Los Angeles without regard to conflict of law principles. Contractor shall comply with new, amended, or revised laws, regulations and/or procedures that apply to the performance of this Agreement.

In any action arising out of this Agreement, 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 Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected thereby.

##### **§403. Integrated Agreement**

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

##### **§404. Excusable Delays**

In the event that performance on the part of any party hereto shall be delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension.

Circumstances deemed to be beyond the control of the parties hereunder shall include, but not be limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; epidemics; quarantine



restrictions; strikes, freight embargoes or delays in transportation; to the extent that they are not caused by the party's willful or negligent acts or omissions and to the extent that they are beyond the party's reasonable control.

**§405. Breach**

Except for excusable delays, as described in §404 herein, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

**§406. Prohibition Against Assignment or Delegation**

The Contractor may not, unless it has first obtained the written permission of the City:

- A. Assign or otherwise alienate any of its rights hereunder, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Agreement.

**§407. Permits**

The Contractor and its directors, officers, agents, employees and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for the Contractor's performance hereunder and shall pay any fees required therefor. The Contractor shall immediately notify the City of any suspension, termination, lapses, non-renewals or restrictions of licenses, permits, certificates or other documents.

**§408. Nondiscrimination and Affirmative Action**

- A. Unless otherwise exempt, this Agreement is subject to the non-discrimination provisions of Section 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The Contractor shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the City of Los Angeles. In performing this Agreement, the Contractor shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, mental disability, marital status, domestic partner status, or medical condition. The Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this

Agreement.

Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of this Agreement.

- B. The Contractor shall comply with the provisions of the Los Angeles Administrative Code Sections 10.8 through 10.13, to the extent applicable hereto. If this Agreement contains a consideration in excess of \$1,000 but not more than \$100,000, the Equal Employment practices provisions of this Agreement shall be the mandatory contract provisions set forth in Los Angeles Administrative Code Section 10.8.3, in which event said provisions are incorporated herein by this reference. If this Agreement contains a consideration in excess of \$100,000, the Affirmative Action Program of this Agreement shall be the mandatory contract provisions set forth in Los Angeles Administrative Code Section 10.8.4, in which event said provisions are incorporated herein by this reference. The Contractor shall also comply with all rules, regulations, and policies of the City's Board of Public Works, Office of Contract Compliance relating to nondiscrimination and affirmative action, including the filing of all forms required by City.
- C. Any subcontract entered into by the Contractor relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this §408.

§409. Claims for Labor and Materials

The Contractor shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Agreement 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 the Contractor hereunder), against the Contractor's rights to payments hereunder, or against the City, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

§410. Current Los Angeles City Business Tax Registration Certificate Required

If applicable, the Contractor represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance Section 21.00 et seq. of the Los Angeles Municipal Code. For the term covered by this Agreement, the Contractor shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance and shall not allow any such Certificate to be revoked or suspended.

§411. Bonds

All bonds which may be required hereunder shall conform to City requirements established by charter, ordinance or policy and 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 Sections 11.47 through 11.56

#### §412. Indemnification

- A. Except for the active negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Contractor undertakes and agrees to defend, indemnify and hold harmless City of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits 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 the City, including, but not limited to, costs of experts and contractors), 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 the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California and the City. The provisions of this paragraph shall survive expiration or termination of this Contract.
- B. Intellectual Property Indemnification - Contractor, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the City, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits 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 the City, including but not limited to, costs of experts and contractors), damages or liability of any nature whatsoever 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 right (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 of any tier, in performing the work under this Contract; or (2) as a result of the City's actual or intended use of any Work Product furnished by Contractor, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the City, under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City. The provisions of this paragraph shall survive expiration or termination of this Contract.
- C. 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, patents, copyrights,

trademarks, trade secrets, rights of publicity and proprietary information.

§413. Insurance

During the term of this Contract and without limiting Contractor's indemnification of the City, Contractor shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by Contractor but not less than the amounts and types listed on the Insurance and Minimum Limits Sheet (Form Gen 146 in Exhibit A hereto), covering its operations hereunder. Such insurance shall conform to City requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit A hereto), shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management, and shall comply with all Insurance Contractual Requirements shown on Exhibit A hereto. Exhibit A is hereby incorporated by reference and made a part of this Contract.

Electronic submission of insurance requirements is the preferred method of submitting Contractor's evidence of insurance documents. **Track4LA™** is the City's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as **ACORD 25 Certificate of Liability Insurance** in electronic format. The easiest and quickest way to obtain approval of Contractor's insurance is to have its insurance broker or agent access **Track4LA™** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on Contractor's behalf. Additional instructions and information on complying with City of Los Angeles insurance requirements can be found at:  
[http://cao.lacity.org/risk/Submitting\\_proof\\_of\\_Insurance.pdf](http://cao.lacity.org/risk/Submitting_proof_of_Insurance.pdf).

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 City may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect City's interests and pay any and all premiums in connection therewith and recover all monies so paid from Contractor.

§414. False Claims Act

Contractor acknowledges that it is aware of liabilities resulting from submitting a false claim for payment to the City under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

§415. Compliance with State and Federal Statutes and Regulations

A. Statutes and Regulations Applicable To All Grant Contracts

Contractor shall comply with all applicable requirements of Federal, State, County and City of Los Angeles laws, executive orders, regulations,



program and administrative requirements, policies and any other requirements governing this Agreement and the Grant. Contractor shall comply with Federal and State laws and regulations pertaining to labor, wages, hours, and other conditions of employment. Contractor shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Agreement and the Grant. When reference is made in the provisions set forth in this Section 415 with regards to laws, rules and regulations “as applicable” (or a variation thereof) to the Contractor, it shall be construed to mean “as applicable” to the Contractor as a recipient of Grant funds pursuant to this particular Agreement. These requirements include, but are not limited to:

1. Office of Management and Budget (OMB) Circulars and Forms

Contractor shall comply with OMB Circulars, as applicable: OMB Circular A-21 (Cost Principles for Educational Institutions); OMB Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments); OMB Circular A-102 (Grants and Cooperative Agreements with State and Local Governments); Common Rule, Subpart C for public agencies or OMB Circular A-110 (Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations); OMB Circular A-122 (Cost Principles for Non-Profit Organizations); OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). OMB standard Form 424B Assurances – Non-construction Programs.

2. Single Audit Act

If Federal funds are used in the performance of this Agreement, Contractor shall adhere to the applicable rules and regulations of the Single Audit Act, 31 USC Sec. 7501 et seq.; City Council action dated February 4, 1987 (C.F. No. 84-2259-S1); and any administrative regulation or field memos implementing the such Act.

3. Americans with Disabilities Act

Contractor hereby certifies that it will comply with the requirements of Titles I, II and III of the Americans with Disabilities Act of 1990 (“ADA”), 42 USC §§ 12101 et seq., and its implementing regulations, including Subtitle A, Title II of the ADA. The Contractor will provide, as applicable, reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the ADA, the ADAAA, the Rehab Act, the UFAS and the FHA and all subsequent amendments. Contractor will not discriminate against persons with disabilities or against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by the Contractor, relating to this Agreement, to the extent allowed hereunder, shall be

subject to the provisions of this paragraph.

4. Political and Sectarian Activity Prohibited

Contractor shall comply with all applicable lobbying prohibitions and laws, including those found in 31 U.S.C. §1352, et seq., and agrees that none of the funds, materials, property or services funded or reimbursed under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office, or to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action concerning the award or renewal of any federal contract, grant, loan or cooperative agreement. Contractor shall not use any funds provided under this Agreement, either directly or indirectly, to support the enactment, defeat, repeal, modification or adoption of any law, regulation, pending legislation, pending regulation, or policy (pending or otherwise), at any level of government. None of the funds provided pursuant to this Agreement shall be used for any sectarian purpose or to support or benefit any sectarian activity.

Concurrent with or prior to the execution of this Agreement, Contractor shall submit to the City a Certification Regarding Lobbying and a Disclosure Form in accordance with 31 U.S.C. 1352. A copy of the Certificate is attached hereto as Exhibit C and incorporated herein. No funds will be released to Contractor until the Certification is filed.

Contractor shall file a Disclosure Form at the end of each calendar quarter in which there occurs any event requiring disclosure or which materially affects the accuracy of any of the information contained in any Disclosure Form previously filed by Contractor. Contractor shall require that the language of this Certification be included in the award documents for all sub-awards at all tiers and that all subcontractors shall certify and disclose accordingly.

5. Reports, Records Inspection and Investigations

At any time during normal business hours and as often as the Grantor and the City may deem necessary, Contractor shall make available for examination all of its records with respect to all matters covered by this Agreement or covered by any subcontract related to the performance of this Agreement. Contractor hereby gives the Grantor and the City, through any authorized representative, access to and the right to examine, audit and make excerpts or transcripts of, all paper or electronic records, books, or documents related to the Grant Funds and all matters covered by this Agreement, including, but not limited to, all Contractor's invoices, materials, payrolls, records of personnel, conditions of employment

and other data relating to all matters covered by this Agreement. The access and inspections rights set forth herein shall include access to applicable facilities, personnel and other individuals and information as may be necessary and as required by the Grantor and applicable Grant regulations and guidance.

Contractor agrees to provide any reports requested by the City regarding performance of the Agreement. The provisions of this Section shall survive the termination of this Agreement.

6. Records Maintenance

Records (including any and all documents), in their original form, shall be maintained in accordance with requirements prescribed by the City and Grantor with respect to all matters covered by this Agreement or covered by any subcontract related to the performance of this Agreement. Such records shall be retained for a period of five (5) years after termination of this Agreement and after final disposition of all pending matters. "Pending matters" include, but are not limited to, an audit, litigation or other actions involving records. The City may, at its discretion, take possession of, retain and audit said records. Records, in their original form pertaining to matters covered by this Agreement, shall at all times be retained within the County of Los Angeles unless authorization to remove them is granted in writing by the City. Contractor shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards and/or Grantor directives. The provisions of this Section shall survive the termination of this Agreement.

7. Labor

Contractor shall comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed requirements and standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System Personnel Administration (5 CFR 900, Subpart F).

Contractor shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements and the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Contractor shall comply, as applicable, with the Federal Fair Labor

Standards Act (29 U.S.C. § 201) as they apply to employees of institutions of higher education, hospitals and other non-profit organizations.

None of the funds paid under this Agreement shall be used to promote or deter union/labor organizing activities in accordance with Government Code §16645 et seq.

8. Civil Rights

Contractor shall comply, and will assure the compliance of all of its agents and subcontractors, with all applicable Federal and State statutes relating to civil rights and nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964, as amended (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686, 44 CFR Part 19), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination against individuals with disabilities; (d) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to non-discrimination in the sale, rental, financing and advertising of dwellings, or in the provision of services in connection therewith, as implemented by the Department of Housing and Urban Development at 24 CFR Part 100; (i) Title 44 Code of Federal Regulations (CFR) Parts 7, 16, and 19 relating to nondiscrimination; (j) the requirements of any other nondiscrimination provisions in the specific statute(s) under which Grant Funds assistance is being made; (k) the nondiscrimination requirements and all other provisions of the current edition of the Office of Justice Programs (OJP) Financial and Administrative Guide for Grants, M7100.1; and (l) P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

In the event that any court or administrative agency makes a finding of discrimination on the grounds of race, color, religion, national



origin (including limited English proficiency), gender, age, familial status or disability against Contractor or any of its subcontractors settles a case or matter alleging such discrimination, Contractor will forward a copy of the complaint and findings to the City. The United States shall have the right to seek judicial enforcement of the obligations set forth herein. If, during the past three years, Contractor has been accused of any such discrimination, Contractor shall provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the City.

Contractor will comply with the applicable requirements of Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency). Contractor shall take reasonable steps to ensure that persons with limited English proficiency (LEP) have meaningful access to its programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Assistance and information regarding LEP obligations may be found at <http://www.lep.gov>.

Contractor shall comply, and ensure that its subcontractors comply, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), and the Juvenile Justice and Delinquency Prevention Act, or the Victims of the Crime Act, as appropriate.

#### 9. Environmental

Contractor shall comply, or has already complied, with the applicable requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §4601 et seq., P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. Contractor shall also comply, as applicable, with Title 44 CFR, Part 25, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted programs.

Contractor shall comply, as applicable, with, and provide any information requested by Grantor and City to ensure compliance with, the following laws and regulations; (a) the requirements of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. §4331 et seq.) and Executive Orders (EO) 11514 and 12898; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990 and 44 CFR Part §9; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved

State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) requirements of the Clean Air Act of 1970 and the Clean Water Act of 1977 (42 U.S.C. §§7401 et seq.) and Executive Order 11738; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93205); (i) the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. §4001 et seq.) which requires recipients of Federal funds in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is ten thousand dollars (\$10,000) or more; (j) requirements of Section 1306(c) of the National Flood Insurance Act of 1968, as amended (44 CFR Part §63); and (k) 44 CFR Part §10, Environmental Considerations.

Contractor shall comply with all applicable Federal, State, and local environmental and historical preservation (EHP) requirements. Failure to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding. Contractor shall comply with all applicable conditions placed on any project as the result of the EHP review, and any change to the scope of work of a project will require re-evaluation of compliance with these EHP requirements. Contractor agrees not to undertake any project under this Agreement having the potential to impact the EHP resources without prior written approval of City and Grantor, including, but not limited to, ground disturbance, construction, modification to any structure, communications towers, physical security enhancements, new construction and modifications to buildings that are fifty (50) years old or more, and the purchase and/or use of any sonar equipment. Any construction related activities initiated prior to full EHP review may result in a noncompliance finding. If applicable, Contractor must complete the FEMA EHP Screening Form (OMB Number 1660-0115/FEMA Form 024-0-01) and submit it, with all supporting documentation, to City for review. If ground-disturbing activities occur during the project implementation, the Contractor must ensure monitoring of the disturbance. If any potential archaeological resources are discovered, the Contractor will immediately cease activity in that area and notify the City and the appropriate State Historic Preservation Office.

Contractor shall comply, as applicable, with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

Contractor shall comply, as applicable, with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

Contractor shall comply, as applicable, with the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) which restores and maintains the chemical, physical and biological integrity of the Nation's waters.

Contractor shall ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of this project are not listed in the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the City of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

By signing this Agreement, Contractor warrants that it is in compliance with the applicable provisions of the California Environmental Quality Act (CEQA), Public Resources Code §21000 et seq. and California Code of Regulations, Title 14, Chapter 3 Section 15000-15007, and is not impacting the environment negatively.

Contractor shall comply, as applicable, with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

Contractor shall comply with the applicable provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 U.S.C. 3501 et. seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.

10. Preservation

Contractor shall comply, as applicable, with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

11. Suspension and Debarment

Contractor shall comply, as applicable, with Federal Register, Volume 68, Number 228, regarding Suspension and Debarment, and Contractor shall submit a Certification Regarding Debarment required by Executive Orders 12549 and 12689 and any amendment thereto (attached hereto as Exhibit B and made a part hereof). Said Certification shall be submitted to the City concurrent with or prior to the execution of this Agreement and shall certify that neither Contractor nor its principals are presently debarred,

suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department head or agency. Contractor shall require that the language of this Certification be included in the award documents for all sub-award at all tiers and that all subcontractors shall certify accordingly. Contractor shall not award any subcontract, or permit any subcontractor in awarding any subcontract, to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Orders 12549 and 12689, "Debarment and Suspension."

12. Drug-Free Workplace

Contractor shall comply, as applicable, with the Federal Drug-Free Workplace Act of 1988, 41 U.S.C. §701 et seq., 44 CFR Part 17, 2 CFR 3001, and the California Drug-Free Workplace Act of 1990, Government Code §§ 8350-8357. Concurrent with or prior to the execution of this Agreement, Contractor shall execute and submit to the City the Certification of Drug-Free Workplace Requirements, attached hereto as Exhibit D and incorporated herein by reference. Failure to comply with these requirements may be cause for debarment.

13. Miscellaneous

Contractor shall comply, as applicable, with the Animal Welfare Act of 1966, as amended (P.L. 89-544, 7 U.S.C. §§2131 et seq.), pertaining to the care, handling and treatment of warm blooded animals held for research, teaching, or other activities. If applicable, Contractor must establish appropriate policies and procedures for the humane care and use of animals based on the Guide for the Care and Use of Laboratory Animals and comply with the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals. Pursuant to the Consolidated Appropriations Act of 2008 (P.L. 110-161) Grant Funds must not be used in contravention of the federal buildings performance and reporting requirements of Executive Order No. 13123, part 3 of Title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.) or subtitle A of Title I of the Energy Policy Act of 2005 (including the amendments made thereby), nor shall Grant Funds be used in contravention of section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212). Contractor shall comply with the Genetic Information Nondiscrimination Act of 2008.

B. Statutes and Regulations Applicable To This Particular Grant

Contractor shall comply with all applicable requirements of State and Federal laws, executive orders, regulations, program and administrative

requirements, policies and any other requirements governing this particular Grant program as set forth in Title 45 CFR Part 75; EO 12372; Grant regulations set forth in Funding Opportunity Announcement number Tp12-1201, entitled " Hospital Preparedness Program (HPP) and Public Health Emergency Preparedness (PHEP) Cooperative Agreement"; and Section III and IV of the Notice of Award for this Grant (5U90TP000516-04). In addition, in accordance with applicable Grant regulations, Contractor agrees and warrants as follows:

1. Contractor shall not use any of the funds paid under this Agreement to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.
2. Contractor warrants that neither it nor any of its officers or agents acting on behalf of Contractor has been convicted of a felony criminal violation under any Federal or State law within the preceding 24 months from the start of the Term of this Agreement.
3. Contractor warrants that it does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
4. Contractor shall comply with all County regulations and requirements that are set forth in the County Agreement as being applicable to a sub-contractor of the City. A copy of the County Agreement is attached hereto as Exhibit E and incorporated herein.
5. Contractor shall comply with the applicable requirements of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), as amended by Section 6202(a) of the Government Funding Transparency Act of 2008 (P.L. 110-252) regarding disclosure of subawards and executive compensation.

C. Noncompliance

Contractor understands that failure to comply with any of the above assurances may result in suspension, termination or reduction of Grant Funds payable under this Agreement, and repayment by Contractor to City of any unlawful expenditures.

**§416. Federal, State and Local Taxes**

Contractor hereby acknowledges and agrees that the compensation payable to Contractor under this Agreement shall be the total amount payable to Contractor for its services under this Agreement and that any and all Federal, State and local taxes or levies owed past, present or in the future in connection with Contractor's services under this Agreement shall be the sole responsibility of Contractor and not the City.



#### §417. Inventions, Patents and Copyrights

##### A. Reporting Procedure for Inventions

If any project funded under this Agreement produces any invention or discovery ("Invention") patentable or otherwise under Title 35 of the U.S. Code, including, without limitation, processes and business methods made in the course of work under this Agreement, the Contractor shall report the fact and disclose the Invention promptly and fully to the City. The City shall report the fact and disclose the Invention to the Grantor. Unless there is a prior agreement between the City and the Grantor, the Grantor shall determine whether to seek protection on the Invention. The Grantor shall determine how the rights in the Invention, including rights under any patent issued thereon, will be allocated and administered in order to protect the public interest consistent with the policy ("Policy") embodied in the Federal Acquisition Regulations System, which is based on Ch. 18 of Title 35 U.S.C. Sections 200 et seq. (Pub. L. 95-517, Pub. L. 98-620, 37 CFR part 401); Presidential Memorandum on Government Patent Policy to the Heads of the Executive Departments and Agencies, dated 2/18/1983); and Executive Order 12591, 4/10/87, 52 FR 13414, 3 CFR, 1987 Comp., p. 220 (as amended by Executive Order 12618, 12/22/87, 52 FR 48661, 3 CFR, 1987 Comp., p. 262). Contractor hereby agrees to be bound by the Policy, and will contractually require its personnel to be bound by the Policy, and will consult with the City regarding allocation of any patent rights that arise from or are purchased with Grant Funds.

##### B. Right of City to Use Inventions

Without limiting the provisions set forth in Paragraph A of this Section 417, City and Grantor shall have an unencumbered, non-exclusive, irrevocable, royalty-free, perpetual license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Invention developed under this Agreement.

##### C. Copyright Policies

Unless otherwise provided by the terms of the Grant or this Agreement, when copyrightable material ("Material") is first produced or developed as part of a project funded by this Agreement, the Grantor and the City, at their respective discretion, may copyright the Material. Before copyrighting any Material, the Contractor shall obtain written permission from the City. If the Grantor or the City declines to copyright the Material, the Grantor and the City shall have an unencumbered, non-exclusive, irrevocable, royalty-free, perpetual license, to reproduce, display, publish, disseminate, perform, prepare derivative works or otherwise use, and authorize others to use, for all government purposes: (a) any Material so produced or developed and (b) any rights of copyright to which Contractor purchases ownership with Grant Funds paid under this Agreement. Contractor shall affix the applicable copyright notices of 17 U.S.C. §401 or

§402 and an acknowledgement of government sponsorship (including Grant award number) to any Material first produced or developed under this Agreement.

D. Rights to Data

The Grantor and the City shall have unlimited rights or copyright license to any data first produced or delivered under this Agreement or to any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works. "Unlimited rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, or permit others to do so as required by 48 CFR 27.401. Where the data are not first produced under this Agreement or are published copyrighted data with the notice of 17 U.S.C. Section 401 or 402, the Grantor acquires the data under a copyright license as set forth in 48 CFR 27.404(f)(2) instead of unlimited rights (48 CFR 27.404(a)).

E. Ownership and License

Unless otherwise provided for herein, all Work Products originated and prepared by Contractor or its subcontractors of any tier under this Agreement shall be and remain the exclusive property of the City for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Agreement including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, 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. Contractor hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by Contractor under this Agreement. Contractor further agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

For all Work Products delivered to the City that are not originated or prepared by Contractor or its subcontractors of any tier under this Agreement, Contractor hereby grants to the City and Grantor a non-exclusive perpetual license to use such Work Products for any government purpose.

F. Obligations Binding on Subcontractors

Contractor shall require all subcontractors funded under this Agreement to comply with the obligations of this section by incorporating the terms of this section into all subcontracts.

§418. Living Wage Ordinance

- A. Unless otherwise exempt, this Agreement is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 et seq. of the Los Angeles Administrative Code, as amended from time to time. The LWO requires the following:
1. Contractor shall assure payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provide compensated and uncompensated days off and health benefits, as defined in the LWO.
  2. Contractor further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. Contractor shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. Contractor shall deliver the executed pledges from each subcontractor to the City within ninety (90) days of the execution of the subcontract. Contractor's delivery of executed pledges from each such subcontractor shall fully discharge the obligation of Contractor with respect to such pledges and fully discharge the obligation of Contractor to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
  3. Contractor, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practices proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. Contractor shall post the Notice of Prohibition against Retaliation provided by the City, a copy of which is attached hereto as Exhibit G.
  4. Any subcontract entered into by Contractor relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this §418 and shall incorporate the provisions of the LWO.
  5. Contractor shall comply with all rules, regulations and policies promulgated by the City's Designated Administrative Agency which may be amended from time to time.
- B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the City shall have the authority, under



appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the City determines that the subject Contractor has violated provisions of the LWO.

- C. Where under the LWO Section 10.37.6(d), the City's Designated Administrative Agency has determined (a) that Contractor is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the City in such circumstances may impound monies otherwise due Contractor in accordance with the following procedures. Impoundment shall mean that from monies due Contractor, City may deduct the amount determined to be due and owing by Contractor to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether Contractor is to continue work following an impoundment shall remain in the sole discretion of the City. Contractor may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. Pursuant to Section 10.37.4 of the Los Angeles Administrative Code, Contractor shall inform its employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the Federal Earned Income Tax Credit (EITC), Contractor shall also make available to its employees the forms informing them about the EITC and forms required to secure advance EITC payments from Contractor.

#### §419. Equal Employment Practices

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this Contract, Contractor agrees and represents that it will provide equal employment practices and Contractor and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
  - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
  - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  - 3. Contractor agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. Contractor will, in all solicitations or advertisements for employees placed

by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the City's supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, Contractor shall certify in the specified format that he or she has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. Contractor shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of City contracts. On their or either of their request Contractor shall provide evidence that he or she has or will comply therewith.
- E. The failure of any Contractor to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of this Agreement. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Contractor.
- F. Upon a finding duly made that Contractor has failed to comply with the Equal Employment Practices provisions of a City contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the Contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, Contractor shall be disqualified from being awarded a contract with the City for a period of two years, or until Contractor shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the City shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as

to require or permit any act which is prohibited by law.

- J. At the time a supplier registers to do business with the City or when an individual bid or proposal is submitted, Contractor shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of City Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
  - 1. Hiring practices;
  - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  - 3. Training and promotional opportunities; and
  - 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the Contractor's Contract with the City.

#### §420. Equal Benefits Ordinance

This Agreement shall be subject to the applicable provisions of Los Angeles Administrative Code Section 10.8.2.1, Equal Benefits Ordinance (EBO).

The Contractor shall complete and upload, the Equal Benefits Ordinance Affidavit (two (2) pages) available on the City of Los Angeles' Business Assistance Virtual Network (BAVN) residing at [www.labavn.org](http://www.labavn.org) for all awards of a City contract valued at \$5,000. The Equal Benefits Ordinance Affidavit shall be effective for a period of twelve months from the date it is first uploaded onto the City's BAVN. Contractors do not need to submit supporting documentation with their bids or proposals. However, the City may request supporting documentation to verify that the benefits are provided equally as specified on the Equal Benefits Ordinance Affidavit.

Contractor may obtain additional information regarding the requirements of the Equal Benefits Ordinance by visiting the Bureau of Contract Administration's web site at [www.bca.lacity.org](http://www.bca.lacity.org).

- A. During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the EBO.
- B. The failure of the Contractor to comply with the EBO will be deemed to be a material breach of the Contract by the City.
- C. If the Contractor fails to comply with the EBO, the City may cancel,

terminate or suspend the Contract, in whole or in part, and all monies due or to become due under may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

- D. Failure to comply with the EBO may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.
- E. If the City's Designated Administrative Agency determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the EBO, the City may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of the Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

**§421. Contractor Responsibility Ordinance**

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq. of the Los Angeles Administrative Code, as amended from time to time, which requires Contractor to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect Contractor's fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, Contractor pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees. The Contractor further agrees to: (1) notify the City within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the Contractor is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the City within thirty calendar days of all findings by a government agency or court of competent jurisdiction that the Contractor has violated the provisions of Section 10.40.3 (a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the City; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the City within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3 (a) of the Contractor Responsibility Ordinance in performance of the subcontract.

**§422. Restriction on Disclosures**

Any reports, analysis, studies, drawings, information, or data generated as a



result of this Agreement are to be considered as confidential. Such information shall not be made available to any individual, agency, or organization except as provided for in this Agreement or as provided by law.

The Contractor must maintain and store medical records in accordance with local State and Federal Rules and Regulations. The Contractor must maintain strict confidentiality of all medical records in accordance with all federal and state statutes and regulations relating to the confidentiality of patient's records and information, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Contractor must inform all its officers, employees, and agents providing services of these confidentiality provisions. City and Contractor shall execute the Business Associate Agreement attached hereto as Exhibit F-4. The Contractor agrees not to disclose any information or statistics that result from the examinations and that would otherwise not be considered confidential to any third party without the expressed written permission of the City.

#### **§423. Child Support Assignment Orders**

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, Contractor will fully comply with all applicable State and Federal employment reporting requirements for Contractor's employees. Contractor shall also certify (1) that the Principal Owner(s) of Contractor are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that Contractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230 et seq.; and (3) that Contractor will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of Contractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any Principal Owner(s) of Contractor to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default by the Contractor under the terms of this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to Contractor by City.

Any subcontract entered into by the Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of the Contractor to obtain compliance of its subcontractors shall constitute a default by the Contractor under the terms of this Contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to Contractor by the City.

Contractor certifies that to the best of its knowledge it is fully complying with the

Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth Section 7110(b) of the California Public Contract Code.

§424. Limitation of Corporate Acts

The Contractor shall not amend its Articles of Incorporation or Bylaws, move to dissolve, transfer any assets derived from funds provided under §301 herein or take any other steps which may materially affect the performance of this Agreement without first notifying the City in writing. The Contractor shall notify the City immediately in writing of any change in the Contractor's corporate name.

§425. Contractor Personnel

The Contractor shall employ persons meeting the qualifications for those positions as negotiated between the Contractor and the City for this Agreement. Contractor shall ensure that Contractor's project team for this Agreement is fully staffed, filling all vacancies in a timely manner with experienced and trained personnel that meet applicable City certification requirements and are in compliance with any requirements identified in City directives. Deviation of the foregoing limitations shall require written City approval before becoming effective. Unless otherwise provided or approved by the City, Contractor shall use its own employees to perform the services described in this Agreement. The City shall have the right to review and approve any personnel who are assigned to work under this Agreement. Contractor agrees to remove personnel from performing work under this Agreement if requested to do so by the City. Contractor shall replace all key personnel with equally or better qualified staff.

Contractor shall not use subcontractors to assist in performance of this Agreement without the prior written approval of the City. If the City permits the use of subcontractors, Contractor shall remain responsible for performing all aspects of this Agreement. The City has the right to approve Contractor's subcontractors, and the City reserves the right to request replacement of subcontractors. The City does not have any obligation to pay Contractor's subcontractors, and nothing herein creates any privity between the City and the subcontractors.

§426. Funding Reduction

- A. During the performance of this Agreement, the City shall have the authority to review the Contractor's actual project expenditures and work performance. Should the City determine that the Contractor is in non-compliance with any contractual obligations, the City shall, at its discretion, take appropriate action as provided by §501 of this Agreement.
- B. In the event that funds are reduced, suspended or terminated by the Grantor, the City reserves the right to reduce, suspend or terminate the funds provided by this Agreement accordingly.

**§427. Press Releases-Public Information, Publications and Markings**

The Contractor shall make specific reference to the City of Los Angeles and the Grantor as the sponsoring agency and that the Contractor is an Equal Opportunity Affirmative Action Employer in all communications with the press, television, radio or any other means of communicating with the general community in connection with the project that is the subject of this Agreement. The Contractor shall make specific reference to the City of Los Angeles and the Grantor as the sponsoring agency of the project, regarding any items which are related to the program which is funded by this Agreement. Contractor shall also coordinate press releases with the City and Grantor for maximum impact.

All publications created or published with funding under this Agreement shall prominently contain the following statement: "This publication was supported by the Grant or Cooperative Agreement Number, CDC-RFA TP12-1201, funded by the Centers for Disease Control and Prevention. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Centers for Disease Control and Prevention or the Department of Health and Human Services."

**§428. Participation of Small, Minority, And Women's Business**

Contractor agrees and obligates itself to utilize the services of Minority, Women and Other business Enterprise firms on a level so designated in its proposal, if any. Contractor certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. Contractor shall not change any of these designated subcontractors, nor shall Contractor reduce their level of effort, without prior written approval of the City, provided that such approval shall not be unreasonably withheld. Consistent with Executive Order Nos. 11625, 12432, and 12138, Contractor shall provide opportunities for small, minority, and women's businesses to participate in contracting and procurement activities generated under this Agreement. The Contractor shall:

- A. Invite small, minority, and women's businesses to participate in procurements under this Agreement.
- B. Divide total requirements into small requirements to permit maximum small, minority, and women's business participation whenever economically feasible.
- C. Use the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the Community Services Administration (or its successor), as required.

The Contractor shall include the requirements of this section in every subcontract for work in connection with this Agreement and project.

**§429. Prohibition of Legal Proceedings**

The Contractor is prohibited from using Grant Funds received under this

Agreement, or funds realized as a result of this Agreement, for the purpose of instituting legal proceedings against the City or their official representatives.

§430. Notice to City of Labor Disputes

When Contractor has knowledge that any actual or potential labor dispute involving participants or other employees is delaying or threatens to delay the timely performance of this Agreement the Contractor shall immediately give notice thereof, including all pertinent information, in regard to same to City.

§431. City Evaluation of Contractor's Performance

City shall conduct an evaluation of the Contractor's performance. As required by the Los Angeles Administrative Code §10.39.2, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, compliance with budget requirements, and the expertise of personnel the Contractor assigns to the Agreement. City will use the final City evaluation, and any response from the Contractor, to evaluate proposals and to conduct reference checks when awarding other service contracts.

§432. Headings and Captions

This Agreement's section headings shall not be deemed to govern, limit, modify, or in any way affect the scope, meaning, or intent of these conditions. Unless defined as a "working day," all reference to days is to calendar days.

§433. Restriction on Disbursements to Subcontractors

If applicable, no money received pursuant to this Agreement by the Contractor shall be disbursed to any subcontractor except pursuant to a written agreement which incorporates the applicable laws, statutes and regulations as set forth in §415 and elsewhere in this Agreement and unless the subcontractor is in compliance with City requirements with regard to accounting and fiscal matters, to the extent that they are applicable.

§434. Records and Audits of Subcontracts

- A. Records shall be maintained in accordance with requirements prescribed by the City with respect to all matters covered by any subcontract. Such records shall be retained within the Los Angeles Area for a period of five (5) years after receipt of final payment under this Agreement, unless authorization to remove them is granted in writing by the City.
- B. Expenditures pertaining to subcontracts shall be supported by properly executed documents evidencing in detail the nature of the charges.
- C. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information as the City may request pertaining to matters covered by any subcontract.
- D. These records shall be made available to the City for copying, audit, and inspection at any time during normal business hours.



**§435. Compliance with Los Angeles City Charter Section 470(c)(12)**

The Contractor, its subcontractors, and their respective principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the contract is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Contractor is required to provide and update certain information to the City as specified by law. Any Contractor subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this Agreement:

**Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions**

As provided in Charter Section 470(c)(12) and related ordinances, you are a subcontractor on City of Los Angeles Contract # [REDACTED]. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to Contractor within ten (10) business days. Failure to comply may result in termination of contract or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213/978-1960.

Contractor, its subcontractors, and their respective principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

Contractor shall execute and submit to the City the City Ethics Commission Forms CEC-50 and CEC-55 Requirements, attached hereto as Exhibit E and incorporated herein by reference.

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## **V. DEFAULTS, SUSPENSION, TERMINATION, AND AMENDMENTS**

### **§501. Defaults**

Should the Contractor fail for any reason to comply with the contractual obligations of this Agreement, the City reserves the right to take any or all of the following actions at its sole discretion:

- A. Notify Contractor of performance deficiencies in accordance with §502 of this Agreement;
- B. Withhold the release of funds;
- C. Require that no funds be advanced to Contractor until Contractor has provided for the security of funds advanced by a Surety/performance bond. The amount and form of the security, if required, shall be determined by the City as noted on Exhibit A (Insurance Requirement Form) and is subject to prior City approval;
- D. Modify and/or renegotiate the funding/service level and/or make any changes in the general scope of this Agreement;
- E. Require Contractor to secure at its own expense the services of Independent Experts;
- F. Require specific performance progress reports for identified time periods;
- G. Reduce compensation within the scope of the City's reallocation policy for services not performed and/or services performed in non-compliance with this Agreement; and
- H. Suspend operations in accordance with §503 below of this Agreement.

### **§502. Notice to Correct Performance**

- A. The City may notify the Contractor of its failure to comply with the terms and conditions of this Agreement by giving written notice, effective upon date of posting, which states the specific performance deficiencies to be corrected.
- B. Within ten (10) calendar days, the Contractor shall reply in writing setting forth the corrective actions that will be undertaken to remedy the performance deficiencies, which actions are subject to City approval in writing.
- C. Contractor shall thereafter submit monthly progress reports to the City in accordance with the City approved corrective action plan specifying the actions taken and resolution of the performance deficiencies.

### **§503. Suspension of the Agreement**

- A. The City may, by giving written notice, suspend all or part of the project operations for Contractor's failure to comply with the terms and conditions of this Agreement. This Notice of Suspension shall be effective upon the date of posting.

- B. This notice shall set forth the specific conditions of noncompliance and the period provided for corrective action.
- C. Within ten (calendar) days from the date of written City notification, the Contractor shall reply in writing setting forth the corrective actions which will be undertaken, subject to City approval in writing. Performance shall not resume without the prior written approval of City.
- D. Performance under this Agreement shall be automatically suspended without any notice from the City as of the date the Contractor is not fully insured in compliance with §413 (Insurance) herein. Performance shall not resume without the prior written approval of City.

**§504. Termination of Agreement**

**A. Termination for Convenience**

The City may terminate this Contract for convenience at any time by giving the other Party thirty (30) days written notice thereof. Upon notice of termination, Contractor shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The Contractor shall reimburse the City for any services that were paid by the City but not rendered by the Contractor, including but not limited to pro-rated reimbursements for memberships that have not expired as of the date of termination. The 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 affect such termination. Thereafter, Contractor shall have no further claims against the City under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become City property upon the date of such termination. Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

**B. Termination for Breach of Contract**

1. Except for excusable delays as provided in §404, 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, the City may give Contractor written notice of such default. If Contractor does not cure such default or provide a plan to cure such default which is acceptable to the City within the time permitted by the City, then the City may terminate this Contract due to Contractor's breach of this Contract.
2. 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 the CITY may immediately terminate this Contract.
3. If Contractor engages in any dishonest conduct related to the

performance or administration of this Contract or violates the City's lobbying policies, then the City may immediately terminate this Contract.

4. In the event the City terminates this Contract as provided in this section, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and Contractor shall be liable to the City for all of its costs and damages, including, but not limited to, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become City property upon date of such termination. Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.
6. 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 Paragraph A of this section, Termination for Convenience.
7. The rights and remedies of the 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.

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## **VI. ENTIRE AGREEMENT**

### **§601. Complete Agreement**

This Agreement contains the full and complete Agreement between the two parties. No verbal agreement nor conversation with any officer or employee of either party shall affect or modify any of the terms and conditions of this Agreement.

### **§602. Amendments**

Any change in the terms of this Agreement, including changes in the services to be performed by the Contractor, and any increase or decrease in the amount of compensation which are agreed to by the City and the Contractor shall be incorporated into this Agreement by a written amendment properly executed and signed by the person authorized to bind the parties thereto.

The Contractor agrees to comply with all future City Directives, or any rules, amendments or requirements promulgated by the City affecting this Contract.

### **§603. Waivers**

Waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City.

No waiver by the City or breach of any provision of these conditions shall be deemed for any purpose to be waiver or a breach of any other provision or of a continuing or subsequent breach of the same provision.

### **§604. Number of Pages and Attachments**

This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement includes thirty-eight (38) pages and eleven (11) Exhibits which constitute the entire understanding and agreement of the parties.

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IN WITNESS WHEREOF, the City of Los Angeles and the Contractor have caused this Agreement to be executed by their duly authorized representatives.

<p>APPROVED AS TO FORM:</p> <p>MICHAEL N. FEUER, City Attorney</p> <p>By _____ Deputy City Attorney</p> <p>Date _____</p>	<p>For: THE CITY OF LOS ANGELES LOS ANGELES FIRE DEPARTMENT</p> <p>By _____ Ralph M. Terrazas, Fire Chief</p> <p>Date _____</p>
<p>ATTEST:</p> <p>HOLLY L. WOLCOTT, City Clerk</p> <p>By _____ Deputy City Clerk</p> <p>Date _____</p>	
<p>(Contractor's Corporate Seal)</p>	<p>For: FIRST WATCH SOLUTIONS, INC., a California corporation</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Officer Title: _____</p> <p>Date: _____</p>
<p>ATTEST:</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Officer Title: _____</p> <p>Date: _____</p>	

City Business License Number: \_\_\_\_\_  
Internal Revenue Service ID Number: \_\_\_\_\_  
Council File/OARS File Number: \_\_\_\_\_ Date of Approval \_\_\_\_\_  
City Contract Number: \_\_\_\_\_



## Exhibit A Indemnification and Insurance Requirements

## Required Insurance and Minimum Limits

Name: Los Angeles Fire DepartmentDate: 08/20/2015Agreement/Reference: FirstWatch Solutions, Inc.

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

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**✓ 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

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**✓ General Liability** \$1,000,000
☐ Products/Completed Operations☐ Sexual Misconduct☐ Fire Legal Liability☐


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**Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work)

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**✓ Professional Liability** (Errors and Omissions) \$1,000,000
Discovery Period 12 Months After Completion of Work or Date of Termination


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**Property Insurance** (to cover replacement cost of building - as determined by insurance company)
☐ All Risk Coverage☐ Boiler and Machinery☐ Flood☐ Builder's Risk☐ Earthquake☐ Fine Arts - Cover value of exhibit

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**Pollution Liability**
☐


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**Surety Bonds - Performance and Payment (Labor and Materials) Bonds**

100% of the contract price

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**Crime Insurance**


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**Other: General Notes:**

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

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

**Exhibit B Certification Regarding  
Debarment, Suspension, Ineligibility  
and Voluntary Exclusion Lower Tier  
Covered Transactions**

## PART 376—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

376.10 What does this part do?

376.20 Does this part apply to me?

376.30 What policies and procedures must I follow?

### Subpart A—General

376.137 Who in the Department of Health and Human Services (HHS) may grant an exception to let an excluded person participate in a covered transaction?

376.147 Does an exclusion from participation in Federal health care programs under Title XI of the Social Security Act affect a person's eligibility to participate in nonprocurement and procurement transactions?

### Subpart B—Covered Transactions

376.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

### Subpart C—Responsibilities of Participants Regarding Transactions

376.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

376.370 What are the obligations of Medicare carriers and intermediaries?

### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

376.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

### Subpart E—Excluded Parties List System [Reserved]

### Subpart F—General Principles Relating to Suspension and Debarment Actions [Reserved]

### Subpart G—Suspension [Reserved]

### Subpart H—Debarment [Reserved]

### Subpart I—Definitions

376.935 Disqualified (HHS supplement to government-wide definition at 2 CFR 180.935).

376.995 Principal (HHS supplement to government-wide definition at 2 CFR 180.995).

### Subpart J [Reserved]

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 6101 (note); E.O. 12689 (3 CFR, 1989 Comp., p. 235); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 11738 (3 CFR, 1973 Comp., p. 799).

SOURCE: 72 FR 9234, Mar. 1, 2007, unless otherwise noted.

### § 376.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Health and Human Services (HHS or Department) policies and procedures for nonprocurement debarment and suspension. HHS thereby gives regulatory effect to the OMB guidance as supplemented by this part. This part satisfies the requirements in 2 CFR 180.20, section 3 of Executive Order 12549, "Debarment and Suspension" (3 CFR 1986 Comp., p. 189), Executive Order 12689, "Debarment and Suspension" (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

### § 376.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)), apply to you if you are a—

(a) Participant or principal in a "covered transaction" under subpart B of 2 CFR part 180, as supplemented by this part, and the definition of nonprocurement transaction" at 2 CFR 180.970.

(b) Respondent in HHS suspension or debarment action;

(c) HHS debarment or suspension official;

(d) HHS grants officer, agreements officer, or other HHS official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 376.30 What policies and procedures must I follow?

The policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, including the corresponding section that HHS published in 2 CFR part 376 identified

by the same section number. The contracts under a nonprocurement transaction, that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, 2 CFR 376.220). For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, HHS policies and procedures are those in the OMB guidance at 2 CFR part 180.

#### Subpart A—General

**§ 376.137 Who in the Department of Health and Human Services (HHS) may grant an exception to let an excluded person participate in a covered transaction?**

The HHS Debarring/Suspension Official has the authority to grant an exception to let an excluded person participate in a covered transaction as provided at 2 CFR 180.135.

**§ 376.147 Does an exclusion from participation in Federal health care programs under Title XI of the Social Security Act affect a person's eligibility to participate in nonprocurement and procurement transactions?**

Any individual or entity excluded from participation in Medicare, Medicaid, and other Federal health care programs under Title XI of the Social Security Act, 42 U.S.C. 1320a–7, 1320a–7a, 1320c–5, or 1395ccc, and implementing regulation at 42 CFR part 1001, will be subject to the prohibitions against participating in covered transactions, as set forth in this part and part 180, and is prohibited from participating in all Federal government procurement programs and nonprocurement programs. For example, if an individual or entity is excluded by the HHS Office of the Inspector General from participation in Medicare, Medicaid, and/or other Federal health care programs, in accordance with 42 U.S.C. 1320a–7, then that individual or entity is prohibited from participating in all

Federal government procurement and nonprocurement programs (42 CFR part 1001).

#### Subpart B—Covered Transactions

**§ 376.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

In addition to the contracts covered under 2 CFR 180.220(b), this part also applies to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c). (See optional lower tier coverage in the diagram in the appendix to 2 CFR part 180.)

#### Subpart C—Responsibilities of Participants Regarding Transactions

**§ 376.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?**

To communicate the requirements to lower-tier participants, you must include a term or condition in the lower-tier transaction requiring the lower-tier participant's compliance with 2 CFR part 180, as supplemented by this subpart.

**§ 376.370 What are the obligations of Medicare carriers and intermediaries?**

Because Medicare carriers, intermediaries and other Medicare contractors undertake responsibilities on behalf of the Medicare program (Title XVIII of the Social Security Act), these entities assume the same obligations and responsibilities as the HHS Medicare officials responsible for the Medicare Program with respect to actions under 2 CFR part 376. This would include the requirement for these entities to check the Excluded Parties List System (EPLS) and take necessary steps to effect this part.



## Exhibit C Certification Regarding Lobbying

## § 28.605

agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

### § 28.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the

## 32 CFR Ch. I (7-1-13 Edition)

agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

### APPENDIX A TO PART 28—CERTIFICATION REGARDING LOBBYING

#### *Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed

**Office of the Secretary of Defense**

**Pt. 28, App. A**

when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

*Statement for Loan Guarantees and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any

agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **Exhibit D Certification Regarding Drug Free Workplace Requirements**

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

**§ 376.437** What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and require the participant to include a similar term or condition in lower-tier covered transactions.

**Subpart E—Excluded Parties List System [Reserved]**

**Subpart F—General Principles Relating to Suspension and Debarment Actions [Reserved]**

**Subpart G—Suspension [Reserved]**

**Subpart H—Debarment [Reserved]**

**Subpart I—Definitions**

**§ 376.935** Disqualified. (HHS supplement to government-wide definition at 2 CFR 180.935).

*Disqualified* means persons prohibited from participating in specified federal procurement and nonprocurement transactions pursuant to the statutes listed in 2 CFR 180.935, and pursuant to Title XI of the Social Security Act (42 U.S.C. 1320a-7, 1320a-7a, 1320c-5, and 1395ccc) as enforced by the HHS Office of the Inspector General.

**§ 376.995** Principal (HHS supplement to government-wide definition at 2 CFR 180.995).

*Principal* means individuals, in addition to those listed at 2 CFR 180.995, who participate in HHS covered transactions including:

- (a) Providers of federally required audit services; and
- (b) Researchers.

**Subpart J [Reserved]**

**PART 382—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE) (Eff. 1-11-2010)**

Sec.

382.10 What does this part do?

382.20 Does this part apply to me?

382.30 What policies and procedures must I follow?

**Subpart A [Reserved]**

**Subpart B—Requirements for Recipients Other Than Individuals**

382.225 Whom in HHS does a recipient other than an individual notify about a criminal drug conviction?

**Subpart C—Requirements for Recipients Who Are Individuals**

382.300 Whom in HHS does a recipient who is an individual notify about a criminal drug conviction?

**Subpart D—Responsibilities of Agency Awarding Officials**

382.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

**Subpart E—Violations of This Part and Consequences**

382.500 Who in HHS determines that a recipient other than an individual violated the requirements of this part?

382.505 Who in HHS determines that a recipient who is an individual violated the requirements of this part?

**Subpart F [Reserved]**

AUTHORITY: 41 U.S.C. 701-707.

SOURCE: 74 FR 58190, Nov. 12, 2009, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 58190, Nov. 12, 2009, part 382 was added, effective Jan. 11, 2010.

**§ 382.10 What does this part do?**

This part requires that the award and administration of HHS grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988



**Exhibit E City Ethics Commission (CEC)  
Form 50**



City Ethics Commission  
200 N Spring Street  
City Hall — 24th Floor  
Los Angeles, CA 90012  
Mail Stop 129  
(213) 978-1960

## Bidder Certification CEC Form 50

Bid/Contract Number:

Department:

Name of Bidder:

Phone:

Address:

Email:

### CERTIFICATION

I certify the following on my own behalf or on behalf of the entity named above, which I am authorized to represent:

- A. I am a person or entity that is applying for a contract with the City of Los Angeles.
- B. The contract for which I am applying is an agreement for one of the following:
1. The performance of work or service to the City or the public;
  2. The provision of goods, equipment, materials, or supplies;
  3. Receipt of a grant of City financial assistance for economic development or job growth, as further described in Los Angeles Administrative Code § 10.40.1(h) [see reverse]; or
  4. A public lease or license of City property where both of the following apply, as further described in Los Angeles Administrative Code § 10.37.1(i) [see reverse]:
    - a. I provide services on the City property through employees, sublessees, sublicensees, contractors, or subcontractors, and those services:
      - i. Are provided on premises that are visited frequently by substantial numbers of the public; or
      - ii. Could be provided by City employees if the awarding authority had the resources; or
      - iii. Further the proprietary interests of the City, as determined in writing by the awarding authority.
    - b. I am not eligible for exemption from the City's living wage ordinance, as eligibility is described in Los Angeles Administrative Code § 10.37(i)(b).
- C. The value and duration of the contract for which I am applying is one of the following:
1. For goods or services contracts—a value of more than \$25,000 and a term of at least three months;
  2. For financial assistance contracts—a value of at least \$100,000 and a term of any duration; or
  3. For construction contracts, public leases, or licenses—any value and duration.
- D. I acknowledge and agree to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if I qualify as a lobbying entity under Los Angeles Municipal Code § 48.02.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Under Los Angeles Municipal Code § 48.09(H), this form must be submitted to the awarding authority with your bid or proposal on the contract noted above.*

**Los Angeles Administrative Code § 10.40.1(h)**

- (h) **“City Financial Assistance Recipient”** means any person who receives from the City discrete financial assistance in the amount of One Hundred Thousand Dollars (\$100,000.00) or more for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation.

Categories of such assistance shall include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

**Los Angeles Administrative Code § 10.37.1(i)**

- (i) **“Public lease or license”.**
- (a) Except as provided in (i)(b), **“Public lease or license”** means a lease or license of City property on which services are rendered by employees of the public lessee or licensee or sublessee or sublicensee, or of a contractor or subcontractor, but only where any of the following applies:
- (1) The services are rendered on premises at least a portion of which is visited by substantial numbers of the public on a frequent basis (including, but not limited to, airport passenger terminals, parking lots, golf courses, recreational facilities); or
  - (2) Any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources; or
  - (3) The DAA has determined in writing that coverage would further the proprietary interests of the City.
- (b) A public lessee or licensee will be exempt from the requirements of this article subject to the following limitations:
- (1) The lessee or licensee has annual gross revenues of less than the annual gross revenue threshold, three hundred fifty thousand dollars (\$350,000), from business conducted on City property;
  - (2) The lessee or licensee employs no more than seven (7) people total in the company on and off City property;
  - (3) To qualify for this exemption, the lessee or licensee must provide proof of its gross revenues and number of people it employs in the company's entire workforce to the awarding authority as required by regulation;
  - (4) Whether annual gross revenues are less than three hundred fifty thousand dollars (\$350,000) shall be determined based on the gross revenues for the last tax year prior to application or such other period as may be established by regulation;
  - (5) The annual gross revenue threshold shall be adjusted annually at the same rate and at the same time as the living wage is adjusted under section 10.37.2 (a);
  - (6) A lessee or licensee shall be deemed to employ no more than seven (7) people if the company's entire workforce worked an average of no more than one thousand two-hundred fourteen (1,214) hours per month for at least three-fourths (3/4) of the time period that the revenue limitation is measured;
  - (7) Public leases and licenses shall be deemed to include public subleases and sublicenses;
  - (8) If a public lease or license has a term of more than two (2) years, the exemption granted pursuant to this section shall expire after two (2) years but shall be renewable in two-year increments upon meeting the requirements therefor at the time of the renewal application or such period established by regulation.

## Exhibit F Project Services

## EXHIBIT F

### Project Services

- Single license of FirstWatch Thin-Client (Remote Data Gathering) Software installed on Licensee's dedicated FirstWatch PC/Server
  - All data integration with Los Angeles Fire Department's Computer Aided Dispatch System integrated via:
    - Connectivity to a data source via ODBC or similar means;
    - or Text or XML *file* output for each incident from a Licensee-provided process (one or more files for each incident) that provides files on the dedicated FirstWatch PC/Server;
    - or client provided web services interface allowing FirstWatch to securely access, query and receive necessary data via a non-dedicated internet connection. Client provided web services interface will include the ability to encrypt and decrypt data and options to query live and historical data.
  - Data Shuttle, remote connectivity and other software and processes on Licensee's dedicated FirstWatch PC which work together to reliably and securely transmit data to the FirstWatch Data Center, and allow for remote support, using Licensee-provided, always-on Internet connectivity.
  - Linking of data sources requires, at a minimum, a unique key that exists within each data source in a useable format.
- Modify centrally located FirstWatch server-based processes, software and database as necessary to receive Licensee's data, import into FirstWatch database, and monitor for statistically-significant increases in volume or geographic clusters of calls which meet user-defined criteria.
- Provide up to fifty (50) Licensee-specific user login(s) and password(s) to allow up to six (6) simultaneous users on the FirstWatch subscriber Internet site, which doubles during an alert to twelve (12) simultaneous users. (Access by additional users may be purchased, and access via FirstWatch to other, 3<sup>rd</sup>-party services or tools, may be licensed separately.)
- Provide the ability for the Licensee to define all system included and client purchased "trigger sets" for monitoring by FirstWatch. Licensee will be able to make up to 4 major or "wholesale" changes to each trigger per year.
- Provide the ability for the Licensee to define up to fifty (50) alert recipients for each trigger, via a combination of email, text messaging, fax, or compatible paging system.

Provide a default "All Events" trigger with monitoring and alerts to demonstrate complete functionality of system.



**Exhibit F-1    FirstWatch Solutions, Inc.  
Software/Hardware Requirements**

**Exhibit F – 1: FW Software/Hardware Requirements**

<b>FirstWatch Hardware Requirements:</b>	
<b>Minimum</b> (only if using existing equipment)	<b>Preferred</b> (required/minimum if new equipment)
Dedicated PC or Virtual Machine used exclusively for FirstWatch purposes	Dedicated Server or Virtual Machine used exclusively for FirstWatch purposes
Pentium IV Compatible 2.0GHz or better as long as it meets the minimum requirements for installed OS	Core Duo 2.4GHz or better
1GB RAM or better	4GB RAM or better
250GB Hard Drive or larger (two partitions 20GB (OS), balance as data)	500GB Hard Drive or larger (two partitions 20GB (OS), balance as data)
10/100mb Ethernet Card	100mb / 1GB Ethernet Card
16/32bit color video, capable of displaying 1024 x 768 in "High" or "True" color	16/32bit color video, capable of displaying 1024 x 768 in "High" or "True" color
Keyboard / mouse / monitor or via KVM	Keyboard / mouse / monitor or via KVM
CD-R/CD R-RW drive or better	CD-RW/DVD drive or better
<b>FirstWatch Software Requirements:</b>	
<b>Minimum</b>	<b>Preferred</b>
Microsoft Windows 2003/2008/XP/Vista/7 Professional including all the latest updates and patches loaded	Microsoft Windows Server 2008 (64bit) Standard Edition including all the latest updates.
Complete (run all from my hard drive) installation of Microsoft Access 2007 or later including all the latest updates and patches loaded. If the database to be monitored is MS SQL Server, SQL Server Management Studio can be installed instead of MS Access.	Complete (run all from my hard drive) installation of Microsoft Access 2007 or later including all the latest updates and patches loaded. If the database to be monitored is MS SQL Server, SQL Server Management Studio can be installed instead of MS Access.
<b>Note:</b> If Priority Alert was purchased, preferred specifications are required.	<b>NOTE:</b> The FirstWatch Priority Alert Module Requires MS SQL Server 2008 R2 Express Edition download for free at: <a href="http://www.microsoft.com/express/database">http://www.microsoft.com/express/database</a>
ODBC driver or other licensed and approved connectivity to underlying database	ODBC driver or other licensed and approved connectivity to underlying database
Virus Protection Software of customer's choosing	Virus Protection Software of customer's choosing
WinZip or compatible software - Not Required if functionality included in Windows OS	WinZip or compatible software - Not Required if functionality included in Windows OS
Microsoft .NET Framework Version 3.5. (installed with local FirstWatch Thin Client Software)	Microsoft .NET Framework Version 3.5 (installed with local FirstWatch Thin Client Software)
Automated Time synchronization software or process of clients choosing. MS Windows OS feature is fine.	Automated Time synchronization software or process of clients choosing. MS Windows OS feature is fine.

**Connectivity / Firewall & Environment:**

Always-on high speed broadband Internet connectivity under customer specified and controlled security settings;  
Recommend static IP address with hardware firewall.

**Read-only Network access to database(s) being monitored (ODBC connection)**

**Outbound** access for **HTTP (port 80)** and **HTTPS (port 443)** with access to \*.firstwatch.net.

For agencies using FirstWatch provided WebEx Remote Access service for installation and support, it may be necessary to create an exception list for WebEx sites on the firewall or proxy to properly use WebEx services. In most cases, the IP Range that can be used to add an exception for the firewall or proxy is 64.68.96.0-64.68.127.255.

SMTP account and access through client controlled server (preferred, not required) or SMTP access to mail.stoutsolutions.com and mail.firstwatch.net. SMTP will be required for Priority Alerting Module if it was purchased.

**Local** (not network) server **administrator** account with access to specifications above.

To maximize system availability FirstWatch recommends remote-client hardware be located with other critical systems and when possible include UPS, back-up generator, monitored data circuit(s) and HVAC controlled secure environment.

**Support:****Minimum**

Allow FirstWatch access to the dedicated machine via WebEx Remote Access client services (or authorized substitute, including VPN). WebEx Remote Access client software provided with FirstWatch under maintenance and service agreement. If VPN or other connection requires additional hardware or software on client or support side, it will be the responsibility of the customer to supply it.

**Disclaimer:** Although FirstWatch requires a dedicated machine for our applications, some clients have requested running the FirstWatch applications on a server that is shared with other applications or in a virtual server environment. We have successfully deployed in a combination of these configurations and are willing to attempt an install in this environment if the client understands that there is risk involved. The risk is that if another process or application on the same machine renders the machine unresponsive, it could potentially stop the processing of the FirstWatch applications. Conversely the FirstWatch applications may affect the other applications. Therefore, if the client decides to move forward in this manner and results in ongoing problems with our application, we will respectfully request that our system be transferred to a dedicated machine for the purpose of running the FirstWatch applications. FirstWatch staff will be happy to assist the client with reconfiguring the FirstWatch system on a new machine.

**Exhibit F-2A FirstWatch Solutions, Inc.  
System Maintenance Agreement**





## Exhibit F-2A: FIRSTWATCH SOLUTIONS, INC. SYSTEM MAINTENANCE AGREEMENT

This System Maintenance Agreement ("Agreement") is made and entered into as of \_\_\_\_\_, 2012, (the "Effective Date") by FirstWatch Solutions, Inc., ("FirstWatch"), a subsidiary of Stout Solutions, LLC, and the undersigned client ("Client").

### BACKGROUND

FirstWatch provides data monitoring, syndromic surveillance software and other services (the "FirstWatch System") to Client;

Client and FirstWatch have entered into a Software License Agreement dated October 4, 2007 (the Software License Agreement").

The parties wish to reaffirm the Software License Agreement and continue the Maintenance Services on the terms contained in this Agreement.

### AGREEMENT

In exchange for the mutual promises contained in this Agreement and other good and valuable consideration, Client and FirstWatch agree to the following:

1. *Services to be Provided by FirstWatch.* FirstWatch shall perform the maintenance services and upgrades described in this Section 1 and more fully set forth on Exhibit D-2-A ("Maintenance Services").

1.1. *Server Hosting.* Subject to the terms set forth in this Agreement, FirstWatch queries and exports or otherwise receives data from Client, or Client-affiliated organization(s), and securely aggregates that data into the FirstWatch Data Center(s)' database(s). FirstWatch implements and maintains a data monitoring system, and monitors records for user-defined criteria, and sends automatic notifications that such criteria have been met. FirstWatch also maintains an Internet site for FirstWatch Clients and Client-authorized subscribers to enable authorized online viewing of Client's records, criteria, notifications, etc., all collectively known as "Triggers".

1.2. *Software Bug Fixes, Upgrades and Enhancements.* During the Term of this Agreement, FirstWatch will maintain and, in some cases, enhance the FirstWatch infrastructure and software feature set that

comprises section 1.1 of this Agreement. Maintenance will include up to two major rewrites of each FirstWatch Trigger per year, as well as software bug fixes and system upgrades as they become available. Additionally, from time-to-time, FirstWatch may offer Client access to optional enhancements and/or add-ons at additional cost, not covered by Fees associated with this Agreement. Further, while FirstWatch will make every reasonable effort to assist Client with trouble-shooting, Maintenance Services do not cover repairs, re-installations, re-configuration, or other work relating to Client's third party software, hardware, networking, etc., or resulting from failures or errors of such components. Also, Maintenance Services will not cover other changes by non-FirstWatch personnel or processes, which result in problems providing the Maintenance Services. Examples include, but are not limited to, changes in the underlying data structure, data feed, code files, client networking or security changes, data entry procedures, etc.

1.3. *Training and Technical Support.* FirstWatch will provide training for Client personnel and make available training materials to persons whom Client identified as authorized users in accordance with the standards set forth on Exhibit D-2-A. FirstWatch may at any time amend Exhibit D-2-A to reflect changes in its business model or Maintenance Service offerings without notice to Client, provided, however, that the Maintenance Services provided to Client shall be substantially similar or superior to those offered on the Effective Date.

2. *Term.* The initial term of this Agreement (the "Term") begins as of the Effective Date and will continue, unless renewed pursuant to Section 3, until the close of business on the first (1st) anniversary of the Effective Date.

3. *Renewal.* The Term will automatically renew for additional one (1) year periods, (each such additional period being referred to in this Agreement as a "Renewal Term") unless, at least thirty (30) days prior to the expiration of the Term, or any Renewal Term, as the case may be, Client provides notice to FirstWatch of its intention to allow the Term or Renewal Term to expire without renewal.

4. *Payment Terms.* On or before the Effective Date, Client will pay to FirstWatch an annual maintenance fee as set forth on the invoice that accompanies this Agreement. FirstWatch reserves the right to change its fees effective as of the end of the Term or Renewal Term, as the case may be, and will provide Client notice at least sixty (60) days prior to the end of any Term or Renewal Term of any proposed amendment to the Fee Schedule.

5. *Termination.* Either party may terminate this Agreement if there is a material breach by the other party that is not cured within thirty (30) days after receipt of written notice of such breach. Upon termination of this Agreement, Client shall discontinue use of the FirstWatch System and the Software and return to FirstWatch or, at FirstWatch's option, certify in writing, the destruction of all Software, documentation and FirstWatch training materials.

6. *Miscellaneous.*

6.1. *Effectiveness of the Software License Agreement.* Each party hereby affirms that the Software License Agreement remains in full force and effect and agrees to continue to comply with its terms.

6.2 *Independent Contractors.* The parties and their respective personnel, are and will be independent contractors and neither party by virtue of this Agreement will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

6.3 *Waiver.* No waiver of any provision hereof or of any right or remedy hereunder will be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, and no partial exercise of any right or remedy hereunder will constitute a waiver of any other right or remedy, or future exercise thereof.

6.4 *Severability.* If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement will remain enforceable.

6.5 *Notice.* All notices will be in writing and will be deemed to be delivered when received by certified mail, postage prepaid, return receipt requested, or when sent by facsimile or e-mail

confirmed by call back. All notices will be directed to the Authorized Representatives of the parties specified in the Software License Agreement, at the respective addresses as either party may, from time to time, designate by notice to the other party.

6.6 *Amendment.* No amendment, change, waiver or discharge hereof will be valid unless in writing and signed by both parties.

6.7 *Assignment.* Neither party shall assign any of its rights or obligations under this Agreement whether voluntarily or by operation of law without the written consent of the other party, provided however, that either party will have the right to assign its obligations hereunder without consent to any acquiror by merger, sale of substantially all of a party's assets, or majority of its stock or otherwise.

6.8 *Entire Agreement.* This Agreement, together with Exhibit D-2-A which is hereby incorporated in this Agreement by reference, together with the Software License, represents the complete and exclusive statement of all mutual understandings between the parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous proposals, communications and understandings, oral or written. If there is a conflict between the terms of the Software License Agreement and this Agreement, the terms of this Agreement shall govern. If there is a conflict between this Agreement and the specifications set forth on Exhibit D-2-A to this Agreement, then the terms of Exhibit D-2-A will govern.

IN WITNESS WHEREOF, the parties have signed and delivered this Agreement with the intention of being bound effective as of the Effective Date.

**FirstWatch Solutions, Inc.**

By: \_\_\_\_\_

Title: President

**Client: City of Los Angeles, (LAFD):**

By: \_\_\_\_\_

Title: \_\_\_\_\_





**Exhibit F-2B FirstWatch ® Maintenance  
Services**

**Exhibit F-2B**  
**FirstWatch® Maintenance Services**

FirstWatch may, at any time, amend this document to reflect changes in its business model or service offerings without notice to Client, provided, however, that the Services provided to Client following an amendment shall be substantially similar or superior to those offered by FirstWatch.

Software and data center maintenance and support is included as part of Client's annual maintenance fees.

Support and Maintenance Services include:

- Normal Business Hour Support
- 24/7 Urgent Technical Support
- FirstWatch Thin-Client Support
- FirstWatch Automated System Health Monitoring
- FirstWatch Software Updates and Fixes
- FirstWatch Selected Software and System Enhancements
- Guidance and Support in Configuring Triggers

**FirstWatch Responsibilities**

**Normal Business Hours Support**

FirstWatch provides normal business hour support for non-critical matters such as configuration consultation, general questions/comments to report possible system problems and enhancement requests.

**Normal Business Hours:**

Mon-Fri, 9:00 am – 5:00 pm (Pacific Time), excluding holidays.

FirstWatch will make every effort to respond to all requests within one (1) business day or sooner.

**24/7 Urgent Technical Support**

24/7 technical support for urgent matters such as inability to access FirstWatch subscriber site or other urgent technical issues that may prevent normal use of the FirstWatch System – excluding issues within the Client's scope of responsibility. On-call technical support is not intended to be used for routine maintenance or changes to the FirstWatch System, unless the change is of an emergent nature.

FirstWatch will make every effort to respond to urgent technical support inquiries within two (2) hours or less.

FirstWatch will provide contact information and methods for requesting support.

#### **FirstWatch Automated System Health Monitoring**

FirstWatch includes several processes that monitor the Client's local FirstWatch System health related to data sources, network connectivity and status of Internet connection. This automated process logs system processes and notifies the on-call technician of potential system trouble.

#### **FirstWatch Software Updates and Fixes**

Includes all software updates to the FirstWatch modules purchased by the Client as long as maintenance for these modules is current and paid. In most cases updates are applied remotely and do not require any action by Client.

#### **FirstWatch Selected Software and System Enhancement**

Selected software and system enhancements may be implemented and offered to Client as add-ons to Client's FirstWatch System. Future additional software and system modules will be offered to Client at a discounted rate.

#### **Advanced Notification of Downtime**

In the event that the FirstWatch System or the Client's local FirstWatch System needs to be taken off-line for support, upgrades or maintenance, reasonable efforts will be made to notify the Client of the down-time in advance. Every effort will be made to provide Client with 24 hours advanced notice.

### **Client Responsibilities**

#### **FirstWatch Thin-Client**

Client is responsible for maintaining the FirstWatch Thin-Client hardware & non-FirstWatch software, including operating system updates/patches, antivirus systems, firewalls, network and internet connectivity to FirstWatch technical specifications. Although FirstWatch will be happy to provide reasonable telephone or email technological advice on support and configuration matters, it is the Client's responsibility to maintain the functional platform for FirstWatch.

#### **Remote Access**

The FirstWatch preferred method of remote connectivity is via WebEx Access Anywhere. This functionality is provided to Client at no additional cost. Alternative methods of connectivity, such as Cisco VPN, Windows VPN or PCAnywhere can be considered, however Client may be responsible for associated costs relating to licensing, training and configuration of these methods. At least five (5) FirstWatch Support Technicians or Engineers will need access, and may need Client-provided software licenses, authentication devices (smart cards, etc) user accounts or other related items/processes.

If Client chooses not to grant FirstWatch 24/7 remote connectivity, they do so with the understanding this may delay FirstWatch from providing support and maintenance service until access is granted. Similarly, remote access methods other than detailed above may have the effect of delaying support and maintenance.

#### **Client Technical Support Procedure**

FirstWatch requests each Client provide contact information and desired procedures to follow when on-site support is needed. FirstWatch will use this information when a technical issue arises that cannot be resolved remotely either due to loss of connectivity to the FirstWatch Thin-Client or other unexpected problem. FirstWatch may not be able to adequately support the FirstWatch Thin-Client until on-site support personnel are available.

It is preferred that Client establishes internal support policies and have on-site personnel who can readily access the FirstWatch Thin-Client, test Internet connectivity and assist with basic trouble-shooting of OS, networking, database systems and knowledge of authentication/security processes for each system.

Client is also requested to identify individuals, including contact information for those individuals who are designated to request changes to system triggers, alerting matrix and other system information.

#### **Advanced Notification of Client's Downtime, Data Source Changes, etc.**

Client will notify FirstWatch of scheduled and unscheduled changes or downtime for the FirstWatch-monitored data source(s), network or Thin-Client hardware or software, or connectivity changes, as well as upgrades, maintenance or other changes which might affect the FirstWatch System.

### **Trigger Guidance & Training**

#### **Guidance and Support in Configuring and Triggers**

FirstWatch will offer guidance and support to Clients in the configuration of their triggers, implementation of system and overall usage of FirstWatch. This guidance includes general best practices, sharing of processes and procedures of other FirstWatch Clients with the goal of assisting Client to achieve maximum benefit from their FirstWatch System.

#### **Trigger Definition, Re-definition, & Refinement**

FirstWatch will work with Client to make complete "wholesale" changes to each Trigger up to 2 times per year, and as many minor refinements to existing triggers as the Client reasonably requires per year. (Note: FirstWatch is working to develop & provide user-oriented, online tools to allow Client to define, re-define and/or refine triggers themselves, without FirstWatch involvement. Once

such tools are available, FirstWatch may reduce the number of minor refinements that will be done at no additional charge by FirstWatch on Client's behalf.)

**Access to FirstWatch Documentation & Training Materials**

FirstWatch will provide Client access to electronic versions of all available training materials pertinent to FirstWatch features available to Client as part of their initial Agreement and/or Maintenance Agreement.

**Access to FirstWatch-Provided Online Group User-Training**

FirstWatch will provide Client access to occasional (typically 2-4 per year) online multi-Client training sessions pertinent to Client's FirstWatch features.

**Additional Training Available**

If Client has purchased, or does purchase, additional general or Client-specific training, it will be separately scheduled at a time that is mutually acceptable to Client and FirstWatch, and will typically be provided online with standard FirstWatch materials, and customized to meet Client needs via interactive and online training.



**Exhibit F-3     Pricing and Payment  
Schedule**

### Exhibit F-3: Pricing and Payment Schedule

This Agreement is dependent on funding by Los Angeles County and the Los Angeles Fire Department may cancel this Agreement at any time, with no obligation if the County fails to provide funds to cover the costs shown below, for any reason.

Quantity	Description	Item Total
1	Annual Support Renewal for FirstWatch System at LAFD for period from 7/1/2012 to 6/30/2013	\$67,617.00
1	Annual Support Renewal for FirstWatch System at LAFD for period from 7/1/2013 to 6/30/2014	\$67,617.00
1	Annual Support Renewal for FirstWatch System at LAFD for period from 7/1/2014 to 6/30/2015	\$67,617.00
1	Annual Support Renewal for FirstWatch System at LAFD for period from 7/1/2015 to 6/30/2016	\$67,617.00
1	Annual Support Renewal for FirstWatch System at LAFD for period from 7/1/2016 to 6/30/2017	\$67,617.00
System Support Renewal Total		\$338,085.00

**Exhibit F-4    Business Associate  
Agreement (HIPAA)**

## EXHIBIT F-4

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "BA-Agreement"), is made as of the \_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), by and between Business Associate and 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 Administrative Simplification), adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, and in order to satisfy the electronic storage requirements of the Health Information Technology for Economic and Clinical Health Act, (hereinafter the "HITECH Act"), and any applicable state confidentiality laws.

### RECITALS

WHEREAS, Business Associate provides professional computing services for real-time early warning of multiple EMS events in the City of Los Angeles as stipulated in Agreement Nos. \_\_\_\_\_ (L.A. County) and \_\_\_\_\_ (L.A. City);

WHEREAS, in connection with these services, Covered Entity discloses to Business Associate certain protected health information that is subject to protection under the HIPAA Administrative Simplification and the HITECH Act.

WHEREAS, the HIPAA Administrative Simplification requires that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the Protected Health Information (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 HIPAA Administrative Simplification, and the HITECH Act, as amended from time to time.

1. Business Associate shall have the meaning ascribed in 45 CFR §164.103, and refer to FirstWatch Solutions, Inc. for purposes of this Agreement.

2. Contract means Los Angeles City Contract number \_\_\_\_\_ by and between the City of Los Angeles and First Watch Solutions, Inc. which include performing activities related to computing services for the real-time early warning of multiple similar EMS events for the Los Angeles Fire Department (LAFD).

3. Covered Entity means the Los Angeles Fire Department (LAFD), a health care component of the City of Los Angeles.

4. Designated Record Set means a group of records maintained by or for a Covered Entity that is: (i) the 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; 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.

5. HITECH Act 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.

6. HIPAA Administrative Simplification means 45 CFR 160, 162 and 164, as amended from time to time, but only to the extent that it applies to Covered Entity and Business Associate.

7. Hybrid Entity means the City of Los Angeles, a single legal entity, (i) that is a Covered Entity; (ii) whose business activities include both covered and non-covered functions; and (iii) that designated its Fire Department as a health care component pursuant to 45 U.S.C. 105 (a) (2)(iii)(C), by its action on July 30, 2010 (CF 10-1181).

8. Individual means the person who is the subject of the protected health information under the definition found at 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

9. Protected Health Information or PHI means the individually identified health information described at 45 C.F.R. §160.103 which is transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any form or medium.

10. Required By Law means mandate contained in law that compels a use or disclosure of PHI (§164.512(a)(1) and (2))

11. Secretary means the Secretary of the Department of Health and Human Services or their designee.

## B. DISCLOSURE OF PHI TO BUSINESS ASSOCIATE

In connection with the services provided by Business Associate to or on behalf of Covered Entity, described in this Agreement, Covered Entity may disclose PHI to Business Associate for the purposes of performing all described activities related to the real-time early warning of multiple similar EMS events by the LAFD. These activities may include, but is not limited to, a review of Patient Care Records (PCR) or other data sets that include PHI. In addition, Business Associate may be required from time to time, to transmit PHI to other business associates or covered entities. Business Associate shall comply with its obligations under this Agreement and with all obligations of a business associate 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.

## 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 CFR § 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 CFR § 164.522, to the extent that such restriction may affect Business Associate's use 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.

## 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 provide real-time early warning of multiple similar EMS



events of the LAFD to the Los Angeles County Department of Health Services and United States Center for Disease Control as described in Agreement No. \_\_\_\_\_ on behalf of the Covered Entity. These activities include a review of all 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 Administrative Simplification 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 Associate of any instances of which it is aware in which confidentiality of the PHI has been breached; and
- (c) 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.

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, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Administrative Simplification.

3. De-identified Information. 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 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 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, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions as apply 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 electronic 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. Under the HIPAA Administrative Simplification, 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. 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 Administrative Simplification, 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 three (3) 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 which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.

10. Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to

be defective in any manner that renders it invalid, 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, or 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.

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.
- (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 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.

## F. Miscellaneous

### 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 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' duties under this Agreement. This indemnity shall apply even if Covered Entity is alleged to be solely or jointly negligent or otherwise solely or jointly at fault; provided, however, that a trier of fact finds Covered Entity not to be solely or jointly negligent or otherwise solely or jointly at fault. 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, 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 (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 representative 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:

Brian L. Cummings, Fire Chief  
Los Angeles Fire Department  
200 N. Main St., Room 1800  
Los Angeles, California 90012  
(213) 978-3838  
(213) 978-3814 fax

And:

Allen Norman, Privacy Officer  
Los Angeles Fire Department  
200 N. Main St., Room 1800  
Los Angeles, California 90012  
(213) 978-3800  
(213) 978-3814 fax



If to Business Associate:  
Mr. Todd Stout  
Chief Executive Officer  
First Watch Solutions, Inc.  
322 Encinitas Blvd, Suite # 100  
Encinitas, CA 92024  
(760) 753-6500

6. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow Covered Entity to comply with the requirements of the HIPAA Rules.
7. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of California, without regard to applicable conflict of laws principles.
8. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary; however, 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.
9. Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.
10. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
11. Equitable Relief. Any disclosure of misappropriation of PHI by 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.

12. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
13. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
14. Headings. The descriptive headings of the articles, sections, subsections of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.
15. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits 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.
16. Regulatory References. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

\*\*\*\*\* (Signature Page to Follow) \*\*\*\*\*

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

Dated: \_\_\_\_\_

For: THE CITY OF LOS ANGELES

By: \_\_\_\_\_

Brian Cummings  
Fire Chief  
Los Angeles Fire Department

Dated: \_\_\_\_\_

For: First Watch Solutions, Inc.

By: \_\_\_\_\_

Mr. Todd Stout  
Chief Executive Officer

Approved as to Form:  
CARMEN A. TRUTANICH, City Attorney

ATTEST:  
JUNE LAGMAY, City Clerk

By: \_\_\_\_\_

Anthony-Paul Diaz  
Deputy City Attorney

By: \_\_\_\_\_

Deputy City Clerk

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Agreement Number: \_\_\_\_\_