

35693

**PROFESSIONAL SERVICES AGREEMENT**

BETWEEN THE CITY OF LONG BEACH  
AND  
VITAL MEDICAL SERVICES, LLC

**THIS AGREEMENT** ("Agreement"), effective December 1, 2020 ("Effective Date"), is between the CITY of LONG BEACH ("CITY"), a municipal corporation, and VITAL MEDICAL SERVICES, LLC ("CONSULTANT"), a California limited liability company (collectively, "PARTIES" or individually, "PARTY").

**RECITALS**

A. [CITY is a public entity organized and existing under its Charter and the State of California's Constitution.]

B. CONSULTANT represents that CONSULTANT is, and will continue to be for this Agreement's duration, a California limited liability company which employs or otherwise engages physicians, physician assistants, nurses, nurse practitioners, paramedics, and phlebotomists who are duly registered or licensed to practice their respective professions in the State of California.

C. CONSULTANT possesses the competence, experience, expertise, skill, facilities, equipment, personnel, financial wherewithal, and other resources necessary to perform this Agreement's tasks in a professional and competent manner.

D. CONSULTANT desires to furnish and perform, and/or cause to be furnished and performed, professional services for CITY, on the terms and conditions described in this Agreement. CONSULTANT has the legal authority to provide, engage in, and carry out, and/or cause to be provided, engaged in or carried out, the professional services set forth in this Agreement.

**AGREEMENT**

**THEREFORE**, CITY engages CONSULTANT's services, and in consideration of the PARTIES' mutual promises, the PARTIES agree as follows:

**1.0 INCORPORATION OF RECITALS**

1.1. The Recitals constitute the factual basis upon which CITY and CONSULTANT have entered into this Agreement. CITY and CONSULTANT acknowledge the Recitals' accuracy and, therefore, incorporate them into this Agreement.

## **2.0 TERM**

2.1. This Agreement's shall commence on December 1, 2020 for a term of two (2) years, with an option to extend for three additional one (1) year periods unless otherwise terminated or suspended ("Term").

## **3.0 SERVICES**

### **3.1. Scope of Work.**

(A) CONSULTANT shall provide the following services ("Scope of Work"):

- (1) Provide non-emergency medical treatment of inmate health issues based on established policies and procedures.
- (2) Provide licensed on-duty personnel to focus on minimizing cost without compromising the type and quality of the necessary medical services.
- (3) Provide one medical staff on-site at the CITY's jail for up to sixteen (16) hours a day, three hundred sixty-five (365) days a year ("Allotted Hours").
- (4) Provide an after-hours resource for both CITY jail and medical personnel to call with questions regarding inmate medical issues.
- (5) Provide on-call physicians twenty-four (24) hours daily, available through telecommunication consultation.
- (6) Provide the CITY medical staff to conduct jail medical services under the provisions of this Agreement, including Physicians, Physicians Assistants, Nurse Practitioners, Nurses, Paramedics, and Phlebotomists.
- (7) Provide to CITY medical staffing during surge times at the discretion of the CONSULTANT.
- (8) Provide physical and mental health examinations as recommended by CONSULTANT's medical staff.
- (9) Perform chronic and infectious disease protocols that conforms with the standards and requirements set by the National Commission on Correctional Health Care (NCCHC), Department of Health Services and Board of State and

Community Corrections (BSCC), Centers for Disease control (CDC) and the City of Long Beach Public Health Authority.

- (10) Remain in constant contact with CITY's jail staff to ensure all levels of medical care are being attended to and meets CITY's standards and National Commission on Correctional Health Care (NCCHC) standards.
- (11) Work closely with CITY and the Department of Health Services' Educators to ensure all new standards are followed and new rules and procedures are implemented and adopted.
- (12) Monitor and adjust staffing levels to help streamline jail operations.
- (13) Take an active role and participation in annual jail audits pertaining to medical services.
- (14) Provide an on-site program that addresses inmate safety, disease prevention, and health promotion among the jail population.
- (15) Provide emergency medical staff written information on the CITY's inmates' medical condition in the event an outside professional is summoned to the CITY's jail for a medical emergency.
- (16) Maintain and manage medical records separate from the custodial records of the inmate maintained by the jail.
- (17) Provide, analyze, and report relevant statistics and overview of medical program in a timeframe decided by the CITY.
- (18) Conduct medical staff meetings with licensed personnel to continuously improve the quality of medical services performed.
- (19) Provide documentation on CITY's jail patient conditions and services provided in the Police Department Record Management System.
- (20) Provide public health updates as they apply to infectious diseases specific to inmate populations.
- (21) Adhere to the security policies and procedures of CITY.

- (22) Attend all Southern California Jail Manager meetings and disseminate current trends and practices to jail oversight command staff.
- (23) Begin the certification process for Joint Commissions and National Correctional Health Care standards as "Best Practice Jail Medical Facility."
- (24) Provide medically appropriate treatment for an Arrestee's minor injuries and health conditions, including the provision of non-prescription medications, when such person is booked and held in custody at the CITY's jail. CITY will reimburse CONSULTANT for prescription and over-the-counter medications purchased to have on hand at the jail. CONSULTANT will bill the CITY for such prescription and over-the-counter medications.
- (25) At times and locations agreed to in advance, CONSULTANT will attend Long Beach Police Department briefings.

(B) If CONSULTANT believes that an Arrestee needs a more in-depth procedure or test, CONSULTANT shall inform CITY so the CITY may determine appropriate action to be taken including releasing an Arrestee from custody and/or transferring an Arrestee to the custody of another appropriate law enforcement agency and/or appropriate medical facility.

(C) The following definitions shall apply to the Scope of Work:

- (1) "Arrestee" means a person has been arrested and is in the custody of the Long Beach Police Department.

### 3.2. **Written Authorization.**

(A) CONSULTANT shall not make changes in the Scope of Work, perform any additional work, or provide any additional material, without first obtaining written authorization from CITY. If CONSULTANT provides additional services or materials without written authorization, or if CONSULTANT exceeds the Maximum Cost in Paragraph 7.5 of this Agreement, CONSULTANT proceeds at CONSULTANT's own risk and without payment.

### 3.3. **Professional Standard of Care.** During this Agreement's Term:

(A) CONSULTANT and its subconsultants, subcontractors, employees, and agents (collectively, "CONSULTANT PARTIES") shall perform all of the services in this Agreement in an expeditious and professional manner, using professionals properly licensed and duly qualified to perform the services.

(B) CONSULTANT PARTIES shall perform the work described in this Agreement in accordance with generally accepted professional practices and principles, and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of CONSULTANT PARTIES' profession currently practicing in California. By delivering the completed work, CONSULTANT PARTIES represent and certify that their work conforms to: the requirements of this Agreement; all applicable (federal, state, county, local, CITY) laws, rules, regulations, orders, and procedures; and the professional standard of care in California.

(C) CONSULTANT PARTIES are responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation: site conditions; existing facilities; seismic, geologic, soils, hydrologic, geographic, climatic conditions; applicable (federal, state, county, local, CITY) laws, rules, regulations, orders, and procedures; and all other contingencies or design considerations. Data, calculations, opinions, reports, investigations, or any other information or documents that CITY provides relating to site, local, or other conditions are not warranted or guaranteed, either expressly or implied, by CITY.

(D) Without additional compensation to CONSULTANT and at no cost to CITY, CONSULTANT shall correct or revise all errors, mistakes, or deficiencies in its work product, studies, reports, designs, drawings, specifications, or other services.

#### **4.0 TIME FOR PERFORMANCE**

4.1. **Force Majeure.** If an event or condition constituting a "force majeure"—including, but not limited to, an act of God, labor dispute, civil unrest, epidemic, or natural disaster—prevents or delays a PARTY from performing or fulfilling an obligation under this Agreement, the PARTY is not in Default, under Paragraph 13.1 of this Agreement, of the obligation. A delay beyond a PARTY's control automatically extends the time, in an amount equal to the period of the delay, for the PARTY to perform the obligation under this Agreement. The PARTIES shall prepare and sign an appropriate document acknowledging any extension of time under this Paragraph.

#### **5.0 PERSONNEL**

5.1. **Project Management.** Each PARTY shall appoint a Project Manager. The Project Managers shall meet as needed to coordinate, review, and ensure CONSULTANT's performance under this Agreement. CITY's Project Manager will oversee the administration of CONSULTANT's tasks under this Agreement.

5.2. **Personnel.** CONSULTANT shall maintain a current list with the names, titles, and qualifications of its personnel who provide services under this Agreement. At any time, upon CITY's request, CONSULTANT shall furnish that list to the Chief of Police or a designee.

5.3. **Independent Contractor.**

(A) CONSULTANT understands and acknowledges that CONSULTANT is an independent contractor, not an employee, partner, agent, or principal of CITY. This Agreement does not create a partnership, joint venture, association, or employer-employee relationship between the PARTIES. At its own expense, CONSULTANT is responsible for providing compensation; employment benefits; disability, unemployment, and other insurance; workers' compensation; training; permits and licenses; and office space for CONSULTANT and for CONSULTANT's employees and subconsultants. CONSULTANT has, and shall retain, the right to exercise full control over the employment, direction, compensation, and discharge of all persons whom CONSULTANT uses in performing the services under this Agreement. CONSULTANT shall provide the services in CONSULTANT's own manner and method, except as this Agreement specifies. CONSULTANT shall treat a provision in this Agreement that may appear either to give CITY the right to direct CONSULTANT as to the details of doing the work, or to exercise a measure of control over the work, as giving CONSULTANT direction only as to the work's end result.

(B) CONSULTANT shall indemnify, defend (including CONSULTANT's providing and paying for reasonable legal fees of legal counsel for CITY), and hold harmless CITY for any obligation; claim; suit; demand for tax or retirement contribution, including any contribution or payment to the Public Employees Retirement System (PERS); social security; salary or wages; overtime, penalty, or interest payment; or workers' compensation payment that CITY may be required to make on behalf of CONSULTANT, an employee of CONSULTANT, or any employee of CONSULTANT construed to be an employee of CITY, for the work done under this Agreement.

5.4. **Non-Discrimination in Employment.** CONSULTANT shall not discriminate against any employee or person who is subject to this Agreement because of race, color, religion, religious belief, national origin, ancestry, citizenship, age, sex, sexual orientation, marital status, pregnancy, parenthood, medical condition, or physical or mental disability.

5.5. **Disability Access Laws.** CONSULTANT represents and certifies that the work product, studies, reports, designs, drawings, and specifications that CONSULTANT prepares under this Agreement fully conform to all applicable disability access and design laws, regulations, and standards— including, but not limited to, the Americans with Disabilities Act (42 U.S.C. Sections 12101 *et seq.*) and Title 24 of the California Code of Regulations— when the Scope of Work requires or calls for compliance with those laws, regulations, or standards.

5.6. **Prevailing Wage Laws.** Services by persons deemed to be employees of CONSULTANT possibly may be subject to prevailing wages under California Labor Code Sections 1770-1781. CONSULTANT's sole responsibility is to comply with those requirements, should they apply. If a dispute based upon the prevailing wage laws occurs, CONSULTANT, at its expense, shall indemnify, defend (including CONSULTANT's providing and paying for reasonable legal fees of legal counsel for CITY), and hold

harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, wages, costs, or expenses pertaining to the prevailing wage laws.

5.7. **Workers' Compensation.** CONSULTANT understands and acknowledges that all persons furnishing services to CITY under this Agreement are, for the purpose of workers' compensation liability, employees solely of CONSULTANT and not of CITY. In performing the services or the work under this Agreement, CONSULTANT is liable for providing workers' compensation benefits to CONSULTANT's employees, or anyone whom CONSULTANT directly or indirectly hires, employs, or uses. CITY is not responsible for any claims at law or in equity caused by CONSULTANT's failure to comply with this Paragraph.

## **6.0 FACILITIES**

6.1. CITY shall provide a room in its jail facility, for CONSULTANT to perform medical screening evaluation services pursuant to this Agreement. When CONSULTANT's services are required at DUI checkpoints, CITY may provide tables and chairs.

6.2. CONSULTANT shall pay for any damage to CITY property, facilities, and/or structures arising out of CONSULTANT's use, occupation, operation, or activities in, upon, under, or over any portion of them. CITY shall reimburse CONSULTANT for any damage to CITY property, facilities, and/or structures caused by CITY or third parties.

## **7.0 PAYMENT**

7.1. For services rendered under Section 3.1, CITY will pay CONSULTANT Seven Hundred Thousand and 00/100 Dollars (\$700,000.00) per year in two equal payments of Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00), one on the Effective Date and the other at the half-way mark between the Effective Date and the end of the fiscal year. For year two, and three if exercised, CITY will pay CONSULTANT Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) within ten (10) days of the beginning of each fiscal year and Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) six (6) months into the fiscal year.

7.2. Charges are set forth below and shall be itemized separately in periodic invoices:

- (A) Any medical staff requested to be on-site exceeding the Allotted Hours is billed in one (1) hour increments at One Hundred Thirty-Two and 00/100 Dollars (\$132.00) per hour.

- (B) Blood draws, warrant blood draws, and medical clearances will be billed at CONSULTANT's prevailing standard rates if performed outside the Allotted Hours.
- (C) Infectious disease exposure blood draws and corresponding laboratory processing performed at any time within the Allotted Hours and outside the Allotted Hours will be billed at the CONSULTANT's prevailing standard rates.
- (D) CONSULTANT will provide equipment and supplies sufficient to provide the Scope of Services as highlighted in Section 3.1, in the sole and absolute discretion of the CONSULTANT. CONSULTANT is not required to make any capital improvements to the jail or CITY property or provide any specific equipment beyond what the CONSULTANT deems to be necessary, in the absolute and sole discretion of the CONSULTANT. CONSULTANT owns all equipment it provides under this Agreement.
- (E) Any response to a local hospital, DUI Checkpoint (OTS grant-related and non-OTS grant-related), on-scene accident, in-field blood draws, or any other location outside the CITY's jail to provide the medical services necessary will be billed at the CONSULTANT's prevailing standard rates.
- (F) All medications at cost.
- (G) Any other services not listed in Section 3.1.

7.3 Except as set forth in Sections 7.1 and 7.2, CONSULTANT shall pay for all expenses, including reimbursable or out-of-pocket expenses, that CONSULTANT incurs in performing the services.

7.4 If CITY requires additional work not included in this Agreement, CONSULTANT and CITY shall negotiate the additional work, mutually agree on the amount of additional compensation, and memorialize the terms in either a separate written contract or an amendment to this Agreement.

7.5. **Maximum Cost.** CONSULTANT expressly acknowledges that the total cost to complete all tasks set forth in Section 3.1 and any additional costs must not exceed Seven Hundred Thousand and 00/100 Dollars (\$700,000.00) ("Maximum Cost") for each year.

7.6. **Taxes.** CONSULTANT shall pay all applicable (federal, state, county, local, CITY) excise, sales, consumer use, possessory interest, or other similar taxes required by law that are levied upon this Agreement or upon CONSULTANT's services under this Agreement.



7.7. **Invoices.** CONSULTANT shall submit an original, itemized invoice to CITY for approval, before receiving compensation. CONSULTANT shall submit the invoice at no more than six (6) month intervals. All invoices must include a summary of total costs, description of the services performed, a brief itemization of costs associated with each task or phase, and the total phase or project costs to date.

## **8.0 AUDIT BY CITY**

8.1. During this Agreement's Term and for a period of twelve (12) months after the expiration, cancellation, or termination of this Agreement, or any extension of it, CONSULTANT shall:

(A) Keep and maintain, in their original form, all records, books, papers, or documents related to CONSULTANT's performance of this Agreement; and

(B) Permit CITY or its authorized representatives, at all reasonable times, to have access to, examine, audit, excerpt, copy, photocopy, photograph, or transcribe all records, books, papers, or documents related to CONSULTANT's performance of this Agreement including, but not limited to: direct and indirect charges, and detailed documentation, for work CONSULTANT has performed or will perform under this Agreement.

## **9.0 DATA, RECORDS, PROPRIETARY RIGHTS**

9.1. **Copies of Data.** CONSULTANT shall provide CITY with copies or originals of all data that CONSULTANT generates, uses, collects, or stores in relation to all work associated with this Agreement. Data that CONSULTANT generates, uses, collects, stores, or provides must be in a form acceptable to, and agreed upon by, CITY.

### **9.2. Ownership and Use.**

(A) CONSULTANT acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work. CONSULTANT makes no representation of the work product's application to, or suitability for use in, circumstances not contemplated by the Scope of Work.

### **9.3. Intellectual Property.**

(A) If CONSULTANT uses or incorporates patented, trademarked, or copyrighted work, ideas, or products— in whole or in part— into CONSULTANT's work product in performing the services under this Agreement, CONSULTANT represents that:

- (1) CONSULTANT holds the patent, trademark, or copyright to the work, idea, or product; or

- (2) CONSULTANT is licensed to use the patented, trademarked, or copyrighted work, idea, or product.

(B) CONSULTANT shall indemnify, defend (including CONSULTANT's providing and paying for reasonable legal fees of legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, royalties, fines, penalties, costs, or expenses arising out of or alleging any infringement or misappropriation of a patent, copyright, trade secret, trade name, trademark, or other intellectual property right or proprietary right in the performance by CONSULTANT of the services under this Agreement.

9.4. **Confidentiality.** Both PARTIES shall not use any information obtained from the services performed in this Agreement for any purpose other than for fulfillment of CONSULTANT's Scope of Work. Without mutual agreement between CITY and CONSULTANT, either PARTY shall not disclose or publish— or authorize, permit, or allow others to disclose or publish— data, drawings, designs, specifications, reports, or other information relating to the services or the work that CITY assigns to CONSULTANT or to which CONSULTANT has access. Notwithstanding the foregoing, CONSULTANT may disclose the existence of this Agreement, its contents, and aggregated statistics regarding the services provided.

9.5. **Public Records Act.**

(A) CONSULTANT acknowledges that this Agreement is a public record. This Agreement, its Exhibits, and all documents produced under this Agreement are subject to the California Public Records Act (Government Code Sections 6250 *et seq.*), including its exemptions. CONSULTANT acknowledges that CITY has no obligation to notify CONSULTANT when a request for records is received.

(B) CONSULTANT shall identify in advance all records, or portions of them, that CONSULTANT believes are exempt from production under the Public Records Act.

(C) If CONSULTANT claims a privilege against public disclosure or otherwise objects to the records' disclosure, then:

- (1) CONSULTANT may, when notified by CITY of the request, seek protection from disclosure by timely applying for relief in a court of competent jurisdiction; or
- (2) CITY may either decline to produce the requested information, or redact portions of the documents and produce the redacted records.

(D) If CONSULTANT fails to identify one or more protectable documents, in CITY's sole discretion, and without its being in breach of this Agreement or its incurring

liability to CONSULTANT, CITY may produce the records— in whole, in part, or redacted— or may decline to produce them.

(E) CONSULTANT shall indemnify, defend (including CONSULTANT's providing and paying for reasonable legal fees of legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, costs, or expenses arising out of or alleging CITY's refusal to publicly disclose one or more records that CONSULTANT identifies as protectable, or asserts is protectable.

## **10.0 CONFLICT OF INTEREST; CAMPAIGN CONTRIBUTIONS**

10.1. **Conflict of Interest.** CONSULTANT represents and certifies that:

(A) CONSULTANT's personnel are not currently officers, agents, employees, representatives, or elected officials of CITY;

(B) CONSULTANT will not employ or hire a CITY officer, agent, employee, representative, or elected official during this Agreement's Term;

(C) CITY's officers, agents, employees, representatives, and elected officials do not, and will not, have any direct or indirect financial interest in this Agreement; and

(D) During this Agreement's Term, CONSULTANT will inform CITY about any possible conflict of interest that may arise as a result of any change in circumstances.

## **11.0 INSURANCE**

11.1.

(A) As a condition precedent to the effectiveness of this Agreement, Consultant shall procure and maintain, at Consultant's expense for the duration of this Agreement, from insurance companies that are admitted to write insurance in California and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following insurance:

(1) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent Consultants liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's

endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

(2) Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

(3) Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.

(4) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than \$500,000 combined single limit per accident.

(B) Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

(C) Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Consultant. Consultant shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

(D) If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Consultant guarantees that Consultant will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

(E) Consultant shall require that all sub-Consultants or Consultants that Consultant uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

(F) Prior to the start of performance, Consultant shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Consultant shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Consultant and

Consultant's sub-Consultants and Consultants, at any time. Consultant shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

(G) Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Consultant, Consultant's sub-Consultants and Consultants change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope or types of coverages are not adequate.

(H) The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Consultant's performance or as full performance of or compliance with the indemnification provisions of this Agreement.

## 12.0 INDEMNITY

12.1. To the maximum extent permitted by law— including, but not limited to, California Civil Code Section 2778— CONSULTANT ("CONSULTANT INDEMNITOR") shall indemnify, defend, and hold harmless CITY, its officers, agents, employees, and representatives (individually and collectively, "CITY INDEMNITEE") from and against a "**liability**" [as defined in Subparagraph (A) below], or an "**expense**" [as defined in Subparagraph (B) below], or both, that arise out of, pertain to, or relate to an act, error, or omission of a CONSULTANT INDEMNITOR in the performance by CONSULTANT INDEMNITOR or any of its employees, agents or subconsultants of the services under this Agreement:

(A) "**Liability**" means claims, suits, actions, causes of action, proceedings, judgments, decrees, awards, settlements, liens, losses, damages, injuries, or liability of any kind, whether the **liability** is:

- (1) Actual or alleged;
- (2) In contract or in tort; or
- (3) For bodily injury (including accidental death), personal injury, advertising injury, or property damage.

(B) "**Expense**" means fees, costs, sums, penalties, fines, charges, or expenses of any kind, including, but not limited to:

- (1) Reasonable attorney's fees;
- (2) Reasonable costs of an investigation, litigation, arbitration, mediation, administrative or regulatory proceeding, or appeal;

(3) Reasonable fees of an accountant, expert witness, consultant, or other professional; or

(4) Pre or post: judgment interest or settlement interest.

12.2. Under this Article, CONSULTANT INDEMNITOR's defense and indemnification obligations:

(A) Subject to Section 12.1 above, apply to a **liability**, or an **expense**, or both, that arise out of, pertain to, or relate to the actual or alleged passive negligence of a CITY INDEMNITEE; but

(B) Do not apply to a **liability**, or an **expense**, or both, that arise out of, pertain to, or relate to the sole active negligence or willful misconduct of a CITY INDEMNITEE.

12.3. To the extent that CONSULTANT INDEMNITOR's insurance policy provides an upfront defense to CITY, CONSULTANT INDEMNITOR's obligation to defend a CITY INDEMNITEE under this Article:

(A) Means that CONSULTANT INDEMNITOR shall provide and pay for reasonable fees of legal counsel, acceptable to CITY, for the CITY INDEMNITEE;

(B) Occurs when a claim, suit, complaint, pleading, or action against a CITY INDEMNITEE arises out of, pertains to, relates to, or asserts an act, error, or omission of CONSULTANT INDEMNITOR; and

(C) Arises regardless of whether a claim, suit, complaint, pleading, or action specifically names or identifies CONSULTANT INDEMNITOR.

12.4. Paragraph 12.3 does not limit or extinguish CONSULTANT INDEMNITOR's obligation to reimburse a CITY INDEMNITEE for the costs of defending the CITY INDEMNITEE against a **liability**, or an **expense**, or both. A CITY INDEMNITEE's right to recover defense costs and reasonable attorney's fees under this Article does not require, and is not contingent upon, the CITY INDEMNITEE's first:

(A) Requesting that CONSULTANT INDEMNITOR provide a defense to the CITY INDEMNITEE; or

(B) Obtaining CONSULTANT INDEMNITOR's consent to the CITY INDEMNITEE's tender of defense.

12.5. If CONSULTANT subcontracts all or any portion of the services under this Agreement, CONSULTANT shall provide CITY with a written agreement from subconsultants, who must indemnify, defend, and hold harmless CITY INDEMNITEE under the terms in this Article.

12.6. CONSULTANT INDEMNITOR's obligation to indemnify, defend, and hold harmless CITY will remain in effect and will be binding upon CONSULTANT INDEMNITOR whether the **liability**, or the **expense**, or both, accrues— or is discovered— before or after this Agreement's expiration, cancellation, or termination.

12.7. Except for Paragraph 12.3, this Article's indemnification and defense provisions are separate and independent from the insurance provisions in Article 11. In addition, the indemnification and defense provisions in this Article:

(A) Are neither limited to nor capped at the coverage amounts specified under the insurance provisions in Article 11; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the insurance provisions in Article 11.

### **13.0 DEFAULT, REMEDIES, AND TERMINATION**

13.1. **Default.** Default under this Agreement occurs upon any one or more of the following events (each an "Event of Default"):

(A) CONSULTANT refuses or fails— whether partially, fully, temporarily, or otherwise— to:

- (1) Provide or maintain enough properly trained personnel, or licensed personnel, or both, to perform the services that this Agreement requires;
- (2) Pay for, obtain, maintain, or renew the insurance policies or coverages that this Agreement requires;
- (3) Comply with indemnification, defense, or hold harmless provisions that this Agreement requires; or

(B) CONSULTANT, or its personnel, or both— whether partially, fully, temporarily, or otherwise:

- (1) Disregards or violates a law, ordinance, rule, procedure, regulation, directive, or order applicable to the performance of the services hereunder or otherwise in connection with this Agreement;
- (2) Refuses or fails to pay for, obtain, maintain, or renew requisite licenses;
- (3) Refuses or fails to observe, perform, or fulfill a covenant, condition, obligation, term, or provision of this Agreement;

- (4) Commits an unlawful, false, fraudulent, dishonest, deceptive, or dangerous act while performing the services under this Agreement; or

(C) CONSULTANT:

- (1) Or another party for or on behalf of CONSULTANT: institutes proceedings under any bankruptcy, reorganization, receivership or other insolvency; or assigns or transfers assets to its creditors;
- (2) Delegates— whether in whole, in part, temporarily, or otherwise— its duties or obligations under this Agreement, without notifying CITY, or without CITY's written authorization;
- (3) Assigns, transfers, pledges, hypothecates, grants, or encumbers— whether in whole, in part, temporarily, or otherwise— this Agreement or any interest in it, without notifying CITY, or without CITY's written authorization;
- (4) Or one of its partners, directors, officers, or general managers, or a person who exercises managerial authority on CONSULTANT's behalf, is convicted under state or federal law, during this Agreement's Term, of embezzlement, theft, fraud, forgery, bribery, deceptive or unlawful business practices, perjury, falsifying or destroying records or evidence, receiving stolen property, or other offense indicating a lack of business integrity or business honesty; or

(D) CITY, or its personnel, or both—whether partially, fully, temporarily, or otherwise refuses or fails to observe, perform, or fulfill a covenant, condition, obligation, term, or provision of this Agreement; or if CITY institutes proceedings under any bankruptcy, reorganization, receivership or other insolvency proceeding.

13.2. **Notice of Default.** If an Event of Default has occurred, the non-defaulting party may give written notice to the other party specifying the Event(s) of Default and the defaulting party shall have thirty (30) days to remedy the Event of Default after receiving the notice. The Notice of Default will set forth one or more bases for any dissatisfaction and may suggest corrective measures.

13.3. **Remedies upon Default.** If, within thirty (30) days after receiving a Notice of Default, the defaulting party has not remedied the Event of Default, or if the defaulting party does not commence steps to remedy the Event(s) of Default to the other party's reasonable satisfaction, the non-defaulting party may exercise any one or more of the following remedies:



(A) In whole or in part and for any length of time, immediately suspend this Agreement until such time as the defaulting party has remedied the Event of Default;

(B) If CONSULTANT is the defaulting party, CITY may provide for the services either through its own forces or from another consultant, and may withhold any money due (or may become owing to) CONSULTANT for a task related to the claimed Default;

(C) If CONSULTANT is the defaulting party, CITY may withhold all moneys, or a sum of money, due CONSULTANT under this Agreement, which in CITY's sole determination, are sufficient to secure CONSULTANT's performance of its duties and obligations under this Agreement;

(D) The non-defaulting party may immediately terminate the Agreement upon written notice to the defaulting party;

(E) The non-defaulting party may exercise any other legal remedy, or equitable remedy, or both, including, but not limited to, filing and action in court:

(1) Seeking specific performance by the defaulting party of all or any part of this Agreement; or

(2) Recovering damages resulting from the Event of Default; or

(F) The non-defaulting party may pursue any other available, lawful right, remedy, or action.

13.4. **Termination for Convenience.** CITY may terminate this Agreement at any time, at will, for any reason or no reason, upon a written fifteen (15) day notice to CONSULTANT. CONSULTANT may terminate this Agreement at any time, at will, for any reason or no reason, upon a written fifteen (15) day notice to CITY.

## **14.0 GENERAL PROVISIONS**

14.1. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the PARTIES. This Agreement supersedes all prior and contemporaneous communications, negotiations, understandings, promises and agreements, either oral or written. Neither CONSULTANT nor CITY has made any promises or representations, other than those contained in this Agreement or those implied by law. The PARTIES may modify this Agreement, or any part of it, by a written amendment with CITY's and CONSULTANT's signature.

14.2. **Interpretation.** This Agreement is the product of negotiation and compromise by both PARTIES. Every provision in this Agreement must be interpreted as though the PARTIES equally participated in its drafting. Therefore, despite the provisions in California Civil Code Section 1654, if this Agreement's language is uncertain, the

Agreement must not be construed against the PARTY causing the uncertainty to exist. In interpreting this Agreement and resolving any ambiguities, this Agreement will take precedence over any cover page or attachments. If a conflict occurs between a provision in this Agreement and a provision in an attachment, the following order of precedence applies, with the terms and conditions in the document higher on the list governing over those lower on the list:

(A) The Agreement.

14.3. **Headings.** All headings or captions in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any term, condition, or provision.

14.4. **Governing Law.** California's laws govern this Agreement's construction and interpretation. Unless this Agreement provides otherwise, any reference to laws, ordinances, rules, or regulations include their later amendments, modifications, and successor legislation.

14.5. **Waiver of Breach.** If a PARTY waives the other PARTY's breach of a term in this Agreement, that waiver is not treated as waiving a later breach of the term and does not prevent the PARTY from later enforcing that term, or any other term. A waiver of a term is valid only if it is in writing and signed by the PARTY waiving it. This Agreement's duties and obligations:

(A) Are cumulative (rather than alternative) and are in addition to (rather than a limitation on) any option, right, power, remedy, or privilege; and

(B) Are not exhausted by a PARTY's exercise of any one of them.

14.6. **Attorney's Fees.** If CITY or CONSULTANT brings an action at law or in equity to enforce or interpret one or more provisions of this Agreement, the "prevailing party" is entitled to "reasonable attorney's fees" in addition to any other relief to which the prevailing party may be entitled. A "prevailing party" has the same meaning as that term is defined in California Code of Civil Procedure Section 1032(a)(4). "Reasonable attorney's fees" of the City Attorney's office means the fees regularly charged by private attorneys who:

(A) Practice in a law firm located in Los Angeles County; and

(B) Have an equivalent number of years of professional experience in the subject matter area of the law for which the City Attorney's services were rendered.

14.7. **Further Assurances.** Upon CITY's request at any time, CONSULTANT shall promptly:

(A) Take further necessary action; and

(B) Sign, acknowledge, and deliver all additional documents as may be reasonable, necessary, or appropriate to carry out this Agreement's intent, purpose, and terms.

14.8. **Assignment.**

(A) This Agreement does not give any rights or benefits to anyone, other than to CITY and CONSULTANT. All duties, obligations, and responsibilities under this Agreement are for the sole and exclusive benefit of CITY and CONSULTANT, and are not for the benefit of another person, entity, or organization. Without CITY's prior written authorization, CONSULTANT shall not do any one or more of the following:

- (1) Assign or transfer a right or interest— whether in whole, in part, temporarily, or otherwise— in this Agreement; or
- (2) Delegate a duty or obligation owed—whether in whole, in part, temporarily, or otherwise—under this Agreement.

(B) Any actual or attempted assignment of rights or delegation of duties by CONSULTANT, without CITY's prior written authorization, is wholly void and totally ineffective for all purposes; and does not postpone, delay, alter, extinguish, or terminate CONSULTANT's duties, obligations, or responsibilities under this Agreement.

(C) If CITY consents to an assignment of rights, or a delegation of duties, or both, CONSULTANT's assignee or legal representative shall agree in writing to personally assume, perform, and to be bound unconditionally by the covenants, obligations, terms, and conditions in this Agreement.

14.9. **Successors and Assigns.** Subject to the provisions in Paragraph 14.8, this Agreement is binding on the heirs, executors, administrators, successors, and assigns of the respective PARTIES.

14.10. **Time is of the Essence.**

(A) Except when this Agreement states otherwise, time is of the essence in this Agreement. CONSULTANT acknowledges that this Agreement's time limits and deadlines are reasonable for CONSULTANT's performing the services under this Agreement.

14.11. **Recycled Paper.** CONSULTANT shall endeavor to submit all reports, correspondence, and documents related to this Agreement on recycled paper.

14.12. **Notices.**

(A) The PARTIES shall submit in writing all notices and correspondence that this Agreement requires or permits, and shall deliver the notices and correspondence to the places set forth below. The PARTIES may give notice by:

- (1) Personal delivery;
- (2) U.S. mail, first class postage prepaid;
- (3) "Certified" U.S. mail, postage prepaid, return receipt requested;  
or
- (4) Facsimile.

(B) All written notices or correspondence sent in the described manner will be presumed "given" to a PARTY on whichever date occurs earliest:

- (1) The date of personal delivery;
- (2) The third (3rd) business day following deposit in the U.S. mail, when sent by "first class" mail;
- (3) The date on which the PARTY or its agent either signed the return receipt or refused to accept delivery, as noted on the return receipt or other U.S. Postal Service form, when sent by "certified" mail; or
- (4) The date of transmission, when sent by facsimile.

(C) At any time, by providing written notice to the other PARTY, CITY or CONSULTANT may change the place, or facsimile number, for giving notice.

CITY: CITY OF LONG BEACH  
Police Department  
Attn: Robert Luna  
Chief of Police  
400 West Broadway  
Long Beach, CA 90802

CONSULTANT: VITAL MEDICAL SERVICES, LLC  
Chief Operating Officer  
700 North Brand Boulevard  
Suite 220  
Glendale, CA 91203

Tel. No. 818-905-1700  
Fax. No. 818-396-8632

14.13. **Survival.** This Paragraph and the obligations set forth in Paragraphs 5.4, 5.5, 5.6, 5.7, 7.1, 7.7, 8.1, 9.1, 9.2, 9.3, 9.4, 9.5, 11.1, 11.2, 12.1, 12.2, 12.3, 12.4,

12.5, 12.6, 12.7, 13.3, 14.5, 14.6, 14.7, 14.8, 14.9, and 14.12 survive this Agreement's expiration, cancellation, or termination.

14.14. **Severability.** The invalidity, in whole or in part, of any term of this Agreement will not affect this Agreement's remaining terms.

14.15. **Counterparts.** This Agreement may be executed in counterparts, each of which is an original, but all of which constitutes one and the same document. The PARTIES shall sign a sufficient number of counterparts, so that each PARTY will receive a fully executed original of this Agreement.

14.16. **Representations – Authority.** The PARTIES represent that:

(A) They have read this Agreement, fully understand its contents, and have received a copy of it;

(B) Through their duly authorized representative, they are authorized to sign this Agreement, and they are bound by its term; and

(C) They have executed this Agreement on the date opposite their signature.

Executed at Los Angeles, California.

**CITY OF LONG BEACH:**

**EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER**

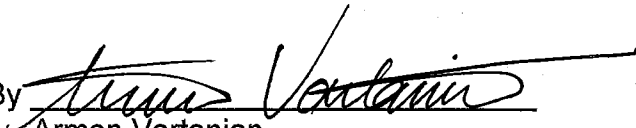
By   
Tom Modica  
Acting City Manager

Date: 11-5-20, 20\_\_

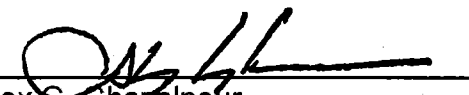
By \_\_\_\_\_  
Robert Luna  
Chief of Police

Date: \_\_\_\_\_, 20\_\_

**CONSULTANT:**

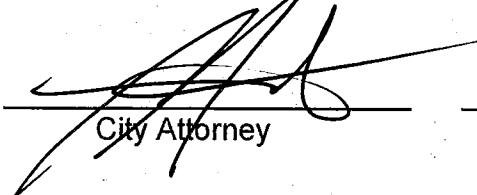
By   
Armen Vartanian  
President

Date: 11/02, 2020

By   
Alex S. Ghazalpour  
Chief Operating Officer

Date: 11/02, 2020

**APPROVED AS TO FORM:**

  
City Attorney

11-5-20  
Date