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**RIGHT OF ENTRY AGREEMENT FOR INSTALLATION AND MAINTENANCE OF SECURITY CAMERAS AT
WASHINGTON ELEMENTARY SCHOOL BETWEEN
LONG BEACH UNIFIED SCHOOL DISTRICT AND THE CITY OF LONG BEACH**

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is made and entered into on ~~February~~ August 27, 2018 ("Effective Date") by and between Long Beach Unified School District, a California public school district located in the County of Los Angeles, California ("District"), and the City of Long Beach, a municipal corporation ("City"). District and City may be individually referred to herein as "Party" or collectively referred to herein as "Parties."

RECITALS

- A. District is owner, in fee, of real property located at 1450 Cedar Avenue in the City of Long Beach, County of Los Angeles, State of California, commonly known as Washington Elementary School ("District Property").
- B. City wishes to enter onto a portion of the Property for the purposes of installing and maintaining two (2) security cameras, more particularly described in Exhibit "A" ("Project" or "Project Work"). Exhibit "B" includes the access points and areas of Project Work ("Project Work Locations"). Exhibit "C" specifies the District's rates and estimated costs related to work and services to be provided by District to help facilitate the Project Work as specified herein ("District Services"). Exhibits "A", "B" and "C" are attached hereto and incorporated herein by this reference.
- C. District wishes to grant City the right of entry onto the District Property subject to the terms and conditions set forth below.

NOW THEREFORE, the District and City hereby agree as follows:

- 1 The above Recitals are hereby incorporated into this Agreement.

2 RESPONSIBILITIES AND OBLIGATIONS

- 2.1 **Right of Entry.** To facilitate the Project Work, District hereby provides City and its agents, representatives, and consultants, the right to reasonable access and use of the District Property, subject to each of the following provisions:
 - 2.1.1 Reasonable precautions will be exercised to avoid damage to and protect the District Property, including Project Work Locations. All reasonable care and effort will be taken to protect the safety and welfare of all District students, staff, employees, parents, children, visitors, and anyone else on District Property or associated with District. It is understood and agreed that District students, parents or guardians, and staff shall be notified of the active surveillance and that prior to activation of the surveillance system, District shall provide appropriate signage, in conspicuous locations regarding said system for which District shall be reimbursed in accordance with Exhibit "C".
 - 2.1.2 City agrees to indemnify, defend and hold harmless the District as further set forth below. City agrees also to either reimburse District for any damage or destruction to the District's Property, occurring solely by reason of the City's exercise of rights granted, or to replace or restore Property to its preexisting condition as of the Effective Date, except for reasonable wear and tear.
 - 2.1.3 City shall notify District at least twenty-four (24) hours prior to entry upon the District Property by City or its agents, representatives, or consultants, as more particularly described in this Agreement.

2.2 **Term.** City's right to enter the Property pursuant to this Agreement shall commence on the Effective Date and shall end on August 26, 2019. The Term may be extended only by a written agreement between the Parties.

2.3 **Payments.** City shall pay District at the rates, and shall pay those costs incurred by District, provided for in Exhibit C for District Services performed by District staff or independent contractors hired by District to assist with Project Work. City shall pay District in due course of payments following receipt from District and approval by City of invoices showing the District Services performed, the time expended (if billing is hourly), the costs incurred, and the name of the Project. District shall certify on the invoices that District has performed the services in full conformance with this Agreement and is entitled to receive payment. Where billing is submitted for District Services and payment is made by City on an hourly basis, the Parties acknowledge that this arrangement is customary for District when District Services are being provided.

3 PERFORMANCE OF PROJECT WORK.

City shall conduct the Project Work in accordance with all applicable laws. All Project Work shall be performed by City at its own expense except as provided for herein, and in a good, safe and workmanlike manner. City shall not commence any portion of the Project Work until City has submitted and District has approved the endorsement(s) of insurance required by the terms and conditions of this Agreement.

3.1 **Equipment and Labor.** City shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to perform the Project Work as described in Exhibit "B", the services to be performed at such times and places as directed by and subject to the approval of the authorized District representative.

3.2 **Utilities.** District shall furnish or cause to be furnished the electrical power necessary for the Project, and will not seek reimbursement from the City for same. City shall be solely responsible for providing all other technology, communication services or other systems required for the installation and maintenance of the Project.

3.3 **City's Contractors.** City agrees to bind every contractor by the terms of this Agreement as far as such terms are applicable to the contractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. City shall be responsible to District for acts and omissions of its contractor(s) and of persons either directly or indirectly employed by City or its subcontractors to the same extent as if those acts and omissions were those of City. Nothing contained in this Agreement, however, shall create any contractual relations between any City contractor or subcontractor and District.

3.4 **Coordination of Work.** Within fifteen (15) days of the Effective Date, City and District shall develop and agree upon a Project schedule for completion of the Project Work ("Work Schedule"). The Work Schedule shall coordinate performance of the Project Work to ensure such is not delayed or disrupted. The Project Work shall be performed with the approval of District. District's approval or inspection of the Project Work shall not, however, relieve City from its responsibility or liability for the means, methods, techniques, sequences, or procedures of construction of the Project Work. Nor shall District's approval of the Project Work subject District to any liability for any aspect of the Project Work.

3.4.1 City shall indicate in the Work Schedule all dates, times, and locations, as well as durations, for which persons performing the Project Work, including but not limited to contractors, subcontractors, vendors, and deliveries, will be arriving at and departing from the District Property. City shall also indicate in the Work Schedule all dates, times,

and locations, as well as durations, for which staging or set-up for and demobilizing of the Project Work will be done. District and City agree that, to the extent possible, the performance of the Project Work shall be limited to non-school hours and District staff shall be available to coordinate City's installation and/or maintenance activities. District shall be compensated for its presence during the Project Work at the rates provided for in Exhibit C.

3.4.2 City shall notify District in writing, if not already indicated in the Work Schedule, of any part or portion of the Project Work and the construction thereof which can reasonably be expected to disturb, impact, interfere with, hinder, delay, or otherwise affect, by way of noise, dust, or other means, the District's operation of school activities, District students, traffic at or nearby the District Property, or any other District activity or service. District reserves the right to refuse to allow City to perform any such activity because of the effect it will have on any particular District activity or service and, if District exercises this right, District agrees to negotiate in good faith with City to establish a mutually agreeable date and time at which City can access the District Property to perform the activity so to reduce the effect such will have on District.

3.4.3 City shall provide District with any and all plans and specifications prepared for the Project Work.

3.4.4 In the event City cannot agree to a Work Schedule within the timeframe set forth in this section, this Agreement may be terminated by District.

3.5 **Change in Scope of Project Work.** Any change in the scope of the Project Work, method of performance, nature of materials, or any other matter materially affecting the performance or nature of the Project Work shall not be made unless such change, addition, or deletion is approved in advance and in writing by District. City also agrees to provide District with all information requested to substantiate the scope of the change to the Project Work. In addition to any other information requested, City shall submit, prior to approval of the change in the scope of the Project Work, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Project Work. If City fails to submit its request for a time extension or the necessary supporting information, the District may, in its discretion, deem such right waived.

3.5.1 The approval by District of the change to the scope of the Project Work shall not relieve City from its responsibility or liability for the means, methods, techniques, sequences, or procedures of installation in the Project Work.

3.6 **Clean Up.** Regarding City's right to enter the District Property for performance and maintenance of the Project Work, upon exiting the District Property at the end of a Project Work day, City shall ensure that the District Property is left in a neat, clean and safe condition. Upon completion of the Project Work, City shall remove all debris from the District Property.

3.7 **Protection of Project Work and Property.** City shall erect and properly maintain at all times, as required by conditions and progress of the Project Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Project Work. In an emergency affecting life and safety of life or of Project Work or of adjoining property, City, without special instruction or authorization from District, is permitted to act at its discretion to prevent such threatened loss or injury. City shall immediately advise the District representative if such action has been necessary.

3.8 **Compliance with Laws.** With respect to its duties and obligations under this Agreement, City shall

observe and comply with all applicable rules and regulations of the governing board of the District and all applicable federal, state, and local laws, ordinances, and regulations, including California's Student Online Personal Information Protection Act, The Family Educational Rights and Privacy Act ("FERPA"), The Children's Online Privacy Protection Act, Data Privacy Requirements for Contracts with Technology Providers (California Education Code section 49073.1). City shall give all notices required by any law, ordinance, rule and regulation bearing on the Project. If City observes that any aspect of the Project is at variance with any such laws, ordinance, rules, or regulations, City shall notify the District, in writing, and, at the sole option and discretion of the District, any necessary changes to the Project shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon City's receipt of a written termination notice from the District.

3.8.1 City shall comply with all lawful instructions from the District relating to compliance with FERPA and the FERPA Regulations.

3.8.2 City shall not use any information or data obtained from the Project, i.e., the security cameras, for any purpose other than those specifically permitted by federal, state and local laws, rules, regulations and ordinances.

3.9 **Notice of Entry to Perform onto District Property.** City shall notify District at least twenty-four (24) hours prior to entry upon the District Property by City or its agents, representatives, or consultants. City agrees to coordinate the Project Work and all activities with District's designated contact person.

3.9.1 District has the right to reasonably not allow access if it will interfere with District activities, and District and City shall negotiate in good faith to provide a mutually acceptable time and date for access. City shall endeavor to perform activities outside school hours when contact with District students will be limited. In the event the Project Work or City access to the District Property will occur during school hours or when District students are present, City may be required to comply with the following Fingerprinting and Criminal Background verification requirements:

3.9.1.1 **Fingerprinting and Criminal Background Verification.** Unless District determines that City, its employees, agents, subcontractors, invitees, and/or volunteers will have limited and/or no contact with District students, City shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Safety Code, §1500 et seq.). In the event Education Code section 45125.1 is deemed applicable, City shall provide in writing verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to the commencement of the Project Work on the District Property, and prior to permitting contact with any District students.

3.10 **Drug-Free, Tobacco-Free, Smoke-Free Policy.** No drugs, alcohol, tobacco and/or smoking are allowed at any time in any buildings and/or on any grounds of the District Property. No students, staff, visitors, consultants, or contractors are to use drugs, alcohol, or tobacco on these sites or to smoke anything on these sites. City is responsible to make sure that no one from City and none of its agents, representatives, or consultants, including its contractors and subcontractors, smoke on the District Property or otherwise violate this policy.

3.11 **Insurance.** City shall secure and maintain, and shall cause any of its contractors to secure and maintain, in full force and effect, commercial general liability insurance or participation in a self-insurance program, including coverage for owned and non-owned automobiles and other insurance necessary to protect the public, with limits of liability of not less than One Million Dollars (\$1,000,000.00) combined single limit bodily injury and property damage. City shall secure and maintain, in full force and effect during the term of this Agreement, workers' compensation insurance, at statutory minimums, including employers' liability coverage with limits not less than One Million Dollars (\$1,000,000.00) for each accident, One Million Dollars (\$1,000,000.00) as the aggregate policy limit, and One Million Dollars (\$1,000,000.00) as the policy limit for each employee. Policies shall be issued by an insurance company or companies that are rated "A-VII" or higher by A.M. Best's key rating guide, and are approved to do business in the State of California. A certificate evidencing the insurance requirements of this section shall be provided prior to commencing any Project Work activities on the District Property. The insurance policies shall include, or be endorsed to include "Long Beach Unified School District" as an additional insured. City may satisfy its insurance obligations by a self-insurance program.

3.12 **Indemnification.** To the fullest extent permitted by California law, the City shall defend, indemnify, protect and hold harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) the City's breach or failure to comply with any of its obligations contained in this Agreement, or (2) negligent or willful acts, errors, omissions or misrepresentations committed by the City, its officers, employees, agents, subcontractors, or anyone under City's control, related to the Project or in the performance of the Project Work (collectively "Claims" or individually "Claim").

3.12.1 In addition to the City's duty to indemnify, the City shall have a separate and wholly independent duty to defend Indemnified Parties at City's expense by legal counsel approved by the City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of the City shall be required for the duty to defend to arise. The Indemnified Parties shall notify the City of any Claim, shall tender the defense of the Claim to the City, and shall assist the City, as may be reasonably requested, but in the District's sole discretion, in the defense.

3.12.2 If a court of competent jurisdiction determines that a Claim was caused by the willful misconduct of Indemnified Parties, the City's costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.

3.12.3 The provisions of this Section shall survive the expiration or termination of this Agreement.

4 MISCELLANEOUS

4.1 **Termination.** If any Party fails to properly fulfill its obligations under this Agreement, or if any Party violates any provision of this Agreement, the non-breaching Party shall notify the other Party in writing of the specific violations of the Agreement. The breaching Party shall have twenty-four (24) hours from receipt of such a notice in which to cure any such violation.

- 4.1.1 If the violation cannot be reasonably cured within a twenty-four (24) hour period, and the breaching Party has diligently pursued such remedy as shall be reasonably necessary to cure the violation, then the Parties may agree in writing to an extension of the period in which the violation may be cured.
- 4.1.2 If the breaching Party has not cured any such violation as specified in the written notice or has not done so within the time provided for under this section, or as otherwise agreed upon by the Parties, then the non-breaching Party, at its sole option, shall have the right to terminate this Agreement.
- 4.2 **No Release.** The expiration or termination of this Agreement shall not release either Party from any liability or obligation which accrued prior to such expiration or termination.
- 4.3 **Time of Essence.** Time is of the essence for each provision of this Agreement in which time is an element.
- 4.4 **Amendment.** No addition to or modification of the terms of this Agreement shall be valid unless made in a written amendment to this Agreement, which is formally approved and signed by each of the Parties to this Agreement.
- 4.5 **Assignment.** Neither Party may assign this Agreement in whole or in part, whether by operation of law or otherwise, to any other entity, agency, or person without the prior written consent of the other Party. Even if that consent is given, any assignment made in contravention of any law will be void and of no effect.
- 4.6 **Waiver.** The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.
- 4.7 **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, addressed as follows:

DISTRICT

Long Beach Unified School District
 Facilities Development & Planning
 2425 Webster Ave.
 Long Beach, CA 90810
 ATTN: Contracts Department
 Telephone: 562-997-7550

CITY

City of Long Beach
 333 W. Ocean Blvd.
 Long Beach, CA 90802
 ATTN: City Manager

With a copy to:

Orbach Huff Suarez & Henderson LLP
 1901 Avenue of the Stars, Suite 575
 Los Angeles, CA 90067
 ATTN: Sarine A. Abrahamian, Esq.
 Telephone: (310) 788-9210

With a copy to:

City of Long Beach
 333 W. Ocean Blvd.
 Long Beach, CA 90802
 ATTN: City Clerk

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 4.8 **Applicable Law.** The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall in all respects be exclusively governed by the laws of the State of California without regard to its conflict of law provisions. Venue for any action arising from this agreement shall be in Los Angeles, California.
- 4.9 **Severability.** Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.
- 4.10 **Captions, Number, and Gender.** The captions appearing at the commencement of the paragraphs, subparagraphs, and sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the article, paragraph, or subparagraph at the head of which it appears, then the article, paragraph, or subparagraph and not the caption shall control and govern the construction of this Agreement. In this Agreement, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.
- 4.11 **Facsimile Signatures.** Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by both Parties. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded. Such documents must bear original signatures.
- 4.12 **No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties hereto, and no third party shall be deemed to be a beneficiary or to have any rights hereunder against any of the Parties hereto, including any real estate brokers.
- 4.13 **Mutual Drafting.** This Agreement shall be construed as if drafted mutually by the Parties through their respective counsel and therefore shall not be construed against either Party.
- 4.14 **Force Majeure.** Neither Party will be responsible for performance under this Agreement to the extent performance is prevented, hindered, or delayed by fire, flood, earthquake, elements of nature, acts of God, acts of war (declared and undeclared), riots, rebellions, revolutions, or terrorism, whether foreseeable or unforeseeable.

IN WITNESS WHEREOF, this Agreement has been executed as of the date last written below.

Dated: 5/17, 2018

Dated: 9/10/18, 2018

Long Beach Unified School District

City of Long Beach

By: Beth A. Smith

By: Patrick West

Print Name: Beth A. Smith

Print Name: Patrick West

Print Title: Asst. Purchasing and
Contracts Director

Print Title: City Manager

Exhibit "A"
Scope of Project Work to Be Performed by City on District Property

The City of Long Beach anticipates the following scope of work to be performed by the City.

Design

Determine specifications and acquire cameras, video recorder, communications and mounting hardware
Provide District specifications for needed electrical, roof space and parapet space for mounting equipment
Conduct a walk-through of installation plan with District if desired

Construction

Coordinate installation of equipment with District personnel

Integration

Coordinate integration of video system to the City's video system

Maintenance

Coordinate maintenance on hardware as needed by the City or as requested by District

Exhibit "B"

Map Depicting Access Areas and Area of Work on District Property for Project Work to Be Performed by City

Google Maps

1450 Cedar Ave

Camera locations: on the west side of the building over the main entrance facing Cedar Ave and on the south side of building facing the alley and employee parking lot.



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Exhibit "C"
Rates and Costs for District Services

1. District shall be compensated by the City for any District employee or District hired independent contractor for maintenance and repairs of Project Work or any other Project Work at a rate of **Thirty-Four Dollars (\$34.00) per hour per District employee or independent contractor.**

2. District shall be reimbursed by the City for the labor, materials, fabrication and installation costs of signs relating and required for the surveillance system at a cost of **Four Hundred Eighty Dollars (\$480.00) for Ten (10) signs, or \$48.00 per sign.**