

AGREEMENT FOR EMS EMERGENCY TRANSPORTATION SERVICES

This agreement ("Agreement") is made and entered into this 19th day of December 2023, by and between the City of Fullerton, a municipal corporation located in the County of Orange ("CITY") and Falck Mobile Health Corp., with principal offices at 1517 W. Braden Ct., Orange, CA 92868 ("CONTRACTOR").

RECITALS

WHEREAS, CITY issued a Request for Proposals on July 31, 2023, related to the provision of emergency transportation services in the City (the "RFP"). A copy of the RFP is attached hereto and incorporated herein by this reference as Exhibit "A"; and

WHEREAS, in response to the RFP, CONTRACTOR submitted a Proposal dated August 25, 2023 (the "Proposal"), a copy of which is attached hereto and incorporated herein by this reference as Exhibit "B"; and

WHEREAS, CONTRACTOR is an ambulance provider fully licensed and otherwise qualified to perform the work required by this Agreement, and was selected by CITY following evaluation of proposals submitted in response to the RFP; and

WHEREAS, CITY desires to utilize the services of CONTRACTOR to provide primary ambulance transportation services and other related services in accordance with the terms of the RFP and applicable federal, state and local laws; and

WHEREAS, at its meeting of November 21, 2023, the Fullerton City Council accepted CONTRACTOR's Proposal and authorized city staff to negotiate an Agreement with CONTRACTOR to provide emergency transportation services described in the RFP and in the Proposal.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained, the parties hereby agree as follows:

AGREEMENT

1. Contract Documents and Order of Precedence

- A.** This Agreement shall consist of the following documents: (a) this Agreement; (b) the City's RFP, (c) and the CONTRACTOR's Proposal. This Agreement, the RFP and the Proposal, shall be hereinafter collectively referred to as the "Contract Documents."

The Contract Documents constitute the entire agreement between the parties. This Agreement contemplates that CONTRACTOR will do whatever is required to perform the work in accordance with the terms of the Contract Documents and in accordance with any applicable governmental laws and regulations, whether specifically identified in the Contract Documents or not. Should any inconsistency

be found to exist between the aforesaid Contract Documents and this written Agreement, the provisions of this Agreement shall control.

- B.** All provisions of the Contract Documents shall be binding on CONTRACTOR. In the event there is any discrepancy between the terms and conditions of one or more of the afore-mentioned Contract Documents, the Order of Precedence shall be used to resolve the discrepancy unless both parties mutually agree in writing to an alternative decision. The Order of Precedence for these documents shall be as follows:

- 1) First, this Agreement (together with any Amendments thereto).
- 2) Second, the RFP.
- 3) Third, the Proposal.

2. Scope of Work

- A.** In exchange for the compensation to be provided by City to Contractor, Contractor will perform all of the services more fully described in Exhibit A and this Section for City. The details of the services to be provided by CONTRACTOR are described in detail in the Contract Documents. Those services shall include the provision of all Emergency Transportation Services, including but not limited to the First Tier Service and the Second Tier Mutual Aid Service (as defined below), together with the provision of any labor, material, supplies and equipment related to the provision of those services, and any other duties, obligation or services required of Contractor in the Contract Documents. (All of the services to be provided by CONTRACTOR under this Agreement shall be hereinafter collectively referred to as the "Emergency Transportation Services"). CONTRACTOR shall perform the Emergency Transportation Services in accordance with the terms and conditions contained in this Agreement, and as described in Contract Documents.
- B.** All emergency transportation personnel assigned by CONTRACTOR or by the Second Tier Provider to perform Emergency Transportation Services under this Agreement shall be hereinafter referred to as the "Transportation Personnel."
- C.** Without limiting CONTRACTOR's obligation to comply with all of its duties and obligations under the Contract Documents, the Emergency Transportation Services to be provided by CONTRACTOR shall include, but shall not be limited to, each of the following:

1) First Tier Service

Contractor will provide with its own forces a sufficient number of fully equipped ambulances and Transportation Personnel, so as to provide, in accordance with industry standards as noted in the Fire/EMS Emergency Ambulance Transportation Services Request for Proposals, all of the City's needs for Emergency Transportation Service, being able to respond 24 hours a day 7

days a week to all 911 and other emergencies as required (the “First Tier Service” or “First Tier”). The First Tier Service will be designed by Contractor so as to ensure that there are enough of Contractor’s own ambulances and Transportation Personnel available to meet 100% of the anticipated number of calls for Emergency Transportation Service in the City. The First Tier Service shall meet the response times and all other requirements in the abovementioned Request for Proposal for the Emergency Transportation Service. Each year thereafter, for the duration of the Term of the proposed Contract, Contractor will be required to re-evaluate the level of coverage being provided, so as to ensure it is providing the required level of coverage.

- a. From January 1, 2024 to June 30, 2024, the First Tier Service will include the provision of three (3) fully equipped dedicated ambulances and associated staffing/Transportation Personnel, which ambulances will provide Emergency Transportation Services exclusively for the City out of Fire Stations No. 1, 3, and 6 (“Station Based Ambulances”).
- b. Beginning on July 1, 2024, and continuing until the termination of this Agreement, the First Tier Service will be expanded. The First Tier Service will include the provision of four (4) fully equipped dedicated ambulances and associated staffing/Transportation Personnel, which ambulances will provide Emergency Transportation Services exclusively for the City out of Fire Stations No. 1, 3, and 6 (“Station Based Ambulances”).
- c. The Fullerton Fire Chief retains the discretion to change the assigned Fire Stations to different stations or locations as deemed necessary for operational efficiency or to better serve the needs of the City.
- d. The Transportation Personnel assigned by Contractor to operate the Station Based Ambulances, will be provided housing at Fullerton fire stations designated by the Fire Chief and provide at least two (2) EMTs per vehicle. Shift scheduling will be at the reasonable discretion of the Fullerton Fire Chief.
- e. The Station Based Ambulances must be able to respond to all 911 and other emergencies as required. Specifically, from January 1, 2024, to June 30, 2024, the three (3) Station Based Ambulances provided must be available 24 hours a day, 7 days a week. Commencing on July 1, 2024, and for the duration of this Agreement, while the initial three ambulances will continue to be available 24/7, the additional (fourth) Station Based Ambulance will be available for a 12-hour shift daily. This 12-hour shift will be scheduled between the hours of 0800 to 2000, unless otherwise directed by the Fullerton Fire Chief, who retains the reasonable discretion to adjust the 12-hour session to best meet the needs of the City.
- f. In addition to the provision of the Station Based Ambulances, which will include three (3) ambulances from January 1, 2024, to June 30, 2024, and

expand to four (4) ambulances beginning July 1, 2024, as outlined in previous sections, Contractor must also provide whatever additional number of fully equipped ambulances and Transportation Personnel which may be required to meet the established response times in abovementioned Request for Proposal (RFP), and to otherwise meet 100% of the anticipated number of calls for Emergency Transportation Service in the City (based on the average number of calls during the preceding two (2) years). Any vehicles and Transportation Personnel dedicated by Contractor to perform Emergency Transportation Services under this paragraph will also be considered to be part of the First Tier Service in addition to the specified number of Station Based Ambulances operational in the respective phases of the Agreement.

- g. The expansion of the minimum number of ambulances and Personnel required for First Tier Service contemplated in Section 2(C)(1)(b) is subject to prior Fullerton City Council approval and appropriation of the compensation necessary for said increase. In the event the City Council does not approve or appropriate such increased amount, the Contractor the First Tier Service shall not be expanded and shall continue at the levels as set forth in Section 2(C)(1)(a).

2) Second Tier Mutual Aid Service

Contractor will also enter into a mutual aid agreement with a separate qualified ambulance service provider doing business in Orange County, to provide backup services in the event the First Tier Service is unable to respond to a call for Emergency Services (hereinafter "Second Tier Mutual Aid Contract," "Second Tier Mutual Aid Service," "Second Tier Service" or "Second Tier."). The company providing the Second Tier Mutual Aid Service will be hereinafter referred to as the "Second Tier Provider." In providing Emergency Transportation Services, the Second Tier Provider must meet the same requirements from abovementioned RFP, response times, and otherwise provide the same level of service, as Contractor is required to provide under the Contract. The Second Tier Mutual Aid Contract and the Second Tier Provider must be approved by the City prior to provision of any service by Contractor, such approval not to be unreasonably withheld. The intent of the RFP is that Contractor will provide a sufficient level of coverage under the First Tier Service, such that services under the Second Tier Mutual Aid Service will only be needed in rare circumstances, if at all. Contractor will be solely responsible for paying the Second Tier Provider for any services rendered under the Second Tier, which amount will be the Second Tier Provider's sole compensation for services rendered under the Second Tier.

- D. All Transportation Personnel assigned to perform Emergency Transportation Services under this Contract, whether under the First Tier Service or Second Tier Mutual Aid Service, will provide Basic Life Support ("BLS") services and transport patients to medical facilities when required. The Fullerton Fire Department will

provide on-scene Advanced Life Support (“ALS”) services.

- E.** All Transportation Personnel assigned to perform Emergency Transportation Service under this Contract, whether under the First Tier Service or Second Tier Mutual Aid Service, must at all times meet the minimum qualifications for the Scope of Work as listed in the Contract Documents.
- F.** The Agreement is subject to annual review based on the criteria specified in the Contract and as outlined herein. The City’s intent is to contract with and hold accountable those parties working with and on behalf of the City of Fullerton in providing Emergency Transportation Service to the citizens and visitors of Fullerton.
- G.** Contractor and the Second Tier Provider will provide type III emergency transport (ambulance) vehicles (including all costs related to maintenance, fuel, insurance, repair costs and communication equipment) in conformity with Orange County Emergency Medical Service (“OCEMS”) policies and procedures for all Emergency Transportation Services provided under the First Tier Service and the Second Tier Mutual Aid Service.
- H.** Return of Fire Personnel. Fire Personnel provide Advanced Life Support (“ALS”) services from a variety of delivery platforms, including engine and truck companies. In cases where Fire Personnel accompany patients in the ambulance enroute to hospitals or to other receiving medical facilities, and the Fire Personnel ALS fire unit does not follow-up to the hospital/receiving medical facility, Contractor shall return those Fire Personnel to their assigned fire station(s) within thirty (30) minutes from the conclusion of the incident. The conclusion of the incident is defined as the moment the patient has been transferred into the care of the hospital/medical staff, the ambulance crew has completed all required documentation, the ambulance has been restocked, and is ready to be placed back into service. At the conclusion of the incident, the ambulance crew is to advise the accompanying Fire Personnel that they are ready to return them to their fire station. If while returning Fire Personnel to their fire station, the ambulance is dispatched to another emergency incident, the ambulance may accept that call for service and take those returning Fire Personnel to the new incident at the discretion of the Fire Personnel on board.
- I.** Wall Time. “Wall time” refers to the time ambulances provided by Contractor wait at local hospitals while delivering patients. During the course of performance of this Agreement, ambulances provided by Contractor will inevitably experience “wall time” that may result in periods where no ambulances will be immediately available in the City. In the event that this occurs and ambulance services are required within the City, Contractor will provide another ambulance to satisfy the City’s need.
- J.** The City has retained the authority to contract for ambulance services pursuant to Government Code § 38794 and Health & Safety Code § 1797.201. The City and

Contractor agree that nothing herein is intended to waive, release, or assign the City's rights under Health and Safety Code § 1797.201.

3. Contract Price and Payment

- A.** CITY shall pay CONTRACTOR a fee amount of two million, four hundred twenty-seven thousand, six hundred dollars (\$2,427,600.00) for Year 1, two million, seven hundred fifty-nine thousand, four hundred dollars (\$2,759,400.00) for Year 2, and two million, nine hundred twelve thousand, seven hundred dollars (\$2,912,700.00) for Year 3 for furnishing the material and doing the prescribed work at the unit prices as set forth in Exhibit B CONTRACTOR's Proposal ("Contract Price"). The CITY shall pay the annual amount in monthly increments, corresponding to the work performed in each month.
- 1)** Contractor's sole compensation for providing all Emergency Transportation Services, specifically including but not limited to the First Tier Service and Second Tier Mutual Aid Service, will be the Contract Price. Contractor will not be entitled to bill City or any of its customers any additional amount for any services provided under this Contract, unless it is first approved in writing by City.
 - 2)** The payment of the Contract Price includes the provision of the Second Tier Mutual Aid Service. Contractor will be solely responsible for compensating the Second Tier Provider for any Emergency Transportation Services it may provide in the City under this Contract, which compensation will be at the rate set forth in the Second Tier Mutual Aid Contract or as otherwise required by law. Contractor and the Second Tier Provider will not have any recourse against the City to recover for any Emergency Transportation Services provided under either the First Tier Service or the Second Tier Mutual Aid Service, except as specifically authorized in the Contract. Contractor's sole compensation will be the Contract Price it receives from City. In the event of a dispute between the Second Tier Provider and Contractor, the Second Tier Provider's sole remedy will be against Contractor. This fact will be clearly stated in the Second Tier Mutual Aid Contract, and Contractor must agree to indemnify and defend City against any claims or demands arising out of, or which are in any way related to, any services provided under the Second Tier Mutual Aid Service. The Second Tier Mutual Aid Contract will include similar provisions requiring the Second Tier Provider to indemnify City for any claims or demands made by Contractor or other parties related to the Emergency Transportation Services it may provide.

4. Billing

- A.** City will be solely responsible for the billing and collection of all amounts owed by customers/patients provided Emergency Transportation Services in the City, whether for services provided by Contractor, the Second Tier Provider, City, or their respective employees, agents, volunteers, or subcontractors. City, in its

discretion, will be free to bill for these services in whatever manner it may deem appropriate, and may combine billings for various services provided. Contractor and the Second Tier Provider will actively cooperate with City to provide whatever information or assistance City may reasonably require so that it can process customer/patient billings in a timely manner. This will include, but is not limited to, Contractor providing City with a detailed list of all the Emergency Transportation Services provided by both the Contractor and the Second Tier Provider during the preceding month. The specific information to be provided by Contractor in the monthly reports will be determined by City and may be modified by City from time to time to meet its reasonable needs. Failure to provide accurate information in a timely manner will constitute a material breach of this Agreement.

- B.** The entire proceeds of all such billings and collection efforts will be the sole property of City. Neither Contractor nor the Second Tier Provider will have any right to the proceeds of any billings or collections for services provided under the First Tier Service, the Second Tier Mutual Aid Service or for any other services provided under this Agreement, unless specifically authorized in writing by City. Contractor must design its bid so that the amount bid as the Contract Price will be sufficient to provide the required level of services under both the First Tier Service and the Second Tier Mutual Aid Service, without expecting any additional amounts in compensation.

5. Term

- A.** Effective Date. The effective date of this Agreement shall be 0001 hours on January 1, 2024 ("Effective Date"), at which time CONTRACTOR will assume full responsibility for the provision of Emergency Transportation Services within the CITY. At the sole discretion of the Fullerton City Manager, the Effective Date may be postponed in order to protect public health and safety, or in the event CONTRACTOR is for any reason unable to commence performance at that time.
- B.** Initial Term. The initial term of the Agreement shall be three (3) years. The contract shall automatically expire at the end of the Initial Term unless extended as provided below.
- C.** Extension. Upon the mutual written agreement of the parties, the Agreement may be extended by the City for two additional one-year terms for a total of two years. Successful past performance during the initial contract period will be a critical factor in the decision to grant an extension. The City's decision to either grant or deny a contract extension(s) shall be final. The decision to grant an extension shall be made by the City Manager. At the end of the Initial Term, or at the end of contract extension term(s) if granted, this Agreement shall automatically terminate (the Initial Term together with any contract extension(s), if any, shall hereinafter be collectively referred to as the "Term").

6. Termination

This Agreement may be terminated by the parties as hereinafter provided:

- A.** This Agreement may be terminated by either party, with or without cause, upon ninety (90) days prior written notice to the other party.
- B.** CITY may terminate this Agreement for Cause by providing CONTRACTOR seven (7) days prior written notice of termination for Cause and the factors constituting Cause, subject to the cure period set forth in Section 7(B) below.
- C.** CITY may terminate this Agreement immediately if the Fullerton City Manager and Fullerton Fire Chief (in their reasonable discretion) determine that continued operations by CONTRACTOR following the breach would constitute a danger to the public health, safety or general welfare.

7. Breach of Agreement

- A.** Factors Constituting Breach and Cause. Factors constituting a breach of this Agreement and also warranting Cause for termination include but are not limited to each of the following:
 - 1)** A failure by CONTRACTOR to perform the material covenants and requirements set forth in the Contract Documents in the time and manner specified, and as required by this Agreement.
 - 2)** Failure of CONTRACTOR to perform the Emergency Transportation Services in a manner which enables the CITY or CONTRACTOR to remain in compliance with the requirements of the County of Orange Emergency Medical Services ("OCEMS") ambulance ordinance and related rules and regulations.
 - 3)** Supplying the CITY with materially false or misleading information during the RFP process or during the course of producing any required reports to the CITY.
 - 4)** Willful falsification or unreasonable withholding of data supplied to the CITY or to OCEMS during the Term of this Agreement, including but not limited to: dispatch data, patient report data, response time data, financial data, or omission of other data required under this Agreement.
 - 5)** Failure to meet the minimum vehicle deployment requirements for ambulance service as described in the Contract Documents.
 - 6)** Repeated failure of CONTRACTOR's employees to conduct themselves in a professional and courteous manner, and to present a professional appearance.

- 7) Failure of CONTRACTOR to maintain all required vehicle maintenance schedules and records as set forth as described in the Contract Documents or as reasonably required by CITY.
- 8) Failure of CONTRACTOR to maintain all training and continuing education as required in the Contract Documents, and as required by and OCERS policies and procedures and State regulations.
- 9) Transfer or assignment of ownership or other interest in CONTRACTOR contrary to the terms of this Agreement, including but not limited to Section 11 of this Agreement ["Assignment"].
- 10) Disruption of service due to failure to maintain ambulance maintenance schedule.
- 11) The lapse of any license, permit or approval issued CONTRACTOR by a federal, state or local government, which license, permit or approval is/are reasonably necessary for the provision of the Emergency Transportation Services contemplated by the Contract Documents.
- 12) CONTRACTOR becomes insolvent or unable to pay its debts as they mature, or makes an assignment for the benefit of creditors, or suffers or fails to pay and discharge within ninety (90) days of entry any final judgment (after exhaustion of any period of appeals) by any court in an amount of fifty thousand dollars (\$50,000.00) or more.
- 13) CONTRACTOR files, or there is filed against CONTRACTOR, a petition to have CONTRACTOR adjudicated in a bankruptcy, or a petition for a reorganization or arrangement under any law relating to bankruptcy or insolvency.
- 14) CONTRACTOR is enjoined or prohibited by any court of competent jurisdiction from performing services under this Agreement.
- 15) The assets of CONTRACTOR are assumed by a trustee or other person pursuant to a judicial proceeding.
- 16) CONTRACTOR breaches or defaults in the performance of any of CONTRACTOR's material duties or obligations arising under this Agreement involving the payment of money, and after receiving written notice thereof from CITY fails within seven (7) days from receipt of such notice or have fully cured and corrected such breach or default.
- 17) Lapse of insurance required under this Agreement.
- 18) Repeated failure to manage and resolve citizen complaints to the satisfaction of the CITY.

19) Repeated failure to meet the on-time performance criteria as required in the RFP.

20) The breach or default of, or a failure to comply with, any material provision of this Agreement, any material provision of the RFP, or of any covenant specifically contained herein or incorporated by reference.

B. Right To Cure. In the event of any dispute arising under this Agreement, the injured Party shall notify the injuring Party in writing of its contentions by submitting a claim therefore. The injured Party shall continue performing its obligations hereunder so long as the injuring Party cures any default within thirty (30) days after service of the notice; provided, however, if a breach of this Agreement creates an immediate danger to the health and safety or general welfare to the CITY, in the reasonable discretion of the City Manager, may take immediate action to remedy the breach itself and/or terminate this Agreement.

Notwithstanding the preceding, if the Fullerton City Manager finds that CONTRACTOR is diligently proceeding with all steps necessary to cure such default, the Fullerton City Manager may, in his sole discretion, extend the time period by which CONTRACTOR must cure such deficiencies, including the effective date of such termination.

C. Waiver. No waiver of any Event of Breach or Default shall be valid or effective unless in writing and signed by CITY. Any waiver of any one Event of Default or Breach shall not constitute, or be construed as creating, a waiver of any other Event of Default or Breach.

D. Action Following Termination. Should this Agreement be terminated for breach, CONTRACTOR agrees that CITY, in their discretion, may take immediate possession of any CITY materials, equipment, and supplies CONTRACTOR may have used in the performance of the Emergency Transportation Services. Notwithstanding the above, should this Agreement be terminated for breach, CITY shall have the option to take over the delivery of the Emergency Transportation Services itself, using CITY personnel or contractors; contract on a temporary emergency basis with other providers of emergency transport ambulance services; seek new proposals for service; or such other option as may be deemed necessary and legally available to CITY.

E. No Limitation On City's Rights. Nothing herein shall act as any limitation upon the remedies available to CITY whether at law, or otherwise, in the event of a breach or default of this Agreement.

8. Insurance

A. Prior to beginning the provision of Emergency Transportation Services under this Agreement, CONTRACTOR must provide to the satisfaction of the CITY, certificates of insurance and endorsements evidencing the policy or policies of insurance in the types and amounts set forth below. CONTRACTOR shall at all

times during the term of this Agreement carry, maintain, and keep in full force and effect, the following minimum scope of insurance coverage:

- 1) Commercial General Liability Insurance in an amount not less than \$10,000,000 per occurrence, written on an occurrence form. If the policy carries an annual aggregate, such aggregate shall be in an amount not less than \$10,000,000 per occurrence.
- 2) Ambulance Medical Malpractice Insurance in an amount not less than \$3,000,000 per occurrence. If the policy carries an annual aggregate, such aggregate shall be in an amount not less than \$6,000,000 per occurrence. Such insurance coverage may be combined with either the general or automobile liability coverage required herein; provided, however, if the insurance coverage is so structured, the combined coverage shall be in an amount not less than \$5,000,000 per occurrence, with an annual aggregate of not less than \$10,000,000.
- 3) Comprehensive Business Automobile Liability Insurance in an amount not less than \$5,000,000 per occurrence, covering owned, non-owned and hired vehicles, written on an occurrence form. If policy carries an annual aggregate, such aggregate shall be in an amount not less than \$10,000,000 per occurrence. Contractor understands that it must provide Business Automobile Liability coverage for all vehicles under both the First Tier Service and the Second Tier Service. This specifically includes, but is not limited to, Contractor's obligation to provide Business Automobile Liability coverage for any vehicles provided by City/ for use by Contractor under the First Tier, as well as for any vehicles provided by Contractor directly.
- 4) Workers' Compensation and Employers' Liability Insurance in a statutory amount for workers' compensation and in an amount not less than \$1,000,000 for employers' liability. Such insurance shall contain a waiver- of-subrogation clause in favor of the CITY and, and their respective officers, officials, employees and agents.

B. CONTRACTOR shall also comply with the following requirements:

- 1) If the above-required insurance coverage does not provide for an annual aggregate which is twice the per-occurrence limit, in the alternative the insurance policy (policies) shall be amended (by appropriate ISO endorsements) so that the policy limits apply solely to this Agreement.
- 2) The above-required liability insurance shall be in a form which supports coverage for the provisions of the indemnification clause required under this Agreement, including a claim brought against the CITY for the injury to, or death of an employee or agent of CONTRACTOR.
- 3) In the event of a claim (claims) against the above-referenced liability policies which reasonably may deplete one-half or more of the aggregate limits,

CONTRACTOR shall immediately notify CITY. In the event a claim (claims) against the above-referenced liability policies which are reasonably expected to deplete 90% of the aggregate limits, CONTRACTOR shall, at CONTRACTOR's expense, reinstate the aggregate limits at least to an amount equal to one-half of the face amount of the aggregate limits on the policies.

- 4) All insurance required pursuant to this section shall be issued by a company authorized by the Insurance Department of the State of California and rated A:VII or better by the latest edition of Best's Key Rating Guide.

C. Endorsements

- 1) All insurance required herein shall be endorsed to state that "Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior to written notice by certified mail, return receipt requested, has been given to the CITY (except for nonpayment for which a ten (10) day notice is required)."
 - 2) The liability policies required herein, except for professional liability (if a stand-above coverage), workers compensation and employers' liability, shall, by endorsement, contain the following provisions:
 - a. "The CITY of Fullerton, and its officers, officials, employees, representatives, and volunteers, are hereby declared to be additional insureds as respects the operations, activities, work, errors, or omissions of the named insured arising out of or in connection with any contract or agreement with the City of Fullerton."
 - b. "This insurance is primary to, and shall not contribute with, any insurance or self-insurance maintained by the City of Fullerton or by any of the designated additional insureds."
 - c. "This insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability."
 - 3) Worker's Compensation and Professional Liability policies shall be endorsed to state that the insurer waives all rights of subrogation against the CITY, and its officers, officials, agents, employees, and volunteers for losses arising from work performed by the CONTRACTOR under this Agreement.
- D.** All insurance coverages shall be confirmed by execution of endorsements and certificates of insurance. CONTRACTOR is required to file the completed policy endorsements and certificates with CITY on or before the Effective Date of this Agreement, and to thereafter maintain current endorsements on file with CITY. The completed endorsements and certificates of insurance are subject to the approval of CITY.

- E. Nothing in this section shall be construed as limiting in any way; the Indemnification and Hold Harmless clause contained herein in this Agreement, or the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property.
- F. CITY shall have the right annually to review the coverage, form, and limits of insurance required herein. If, in the reasonable discretion of the CITY based on a clearly identified need, the insurance provisions in this Agreement do not provide adequate protection for the CITY, the CITY shall have the right to require CONTRACTOR to obtain insurance sufficient in coverage, form, and limits to provide adequate protection and CONTRACTOR shall comply with such requirement no later than the date of CONTRACTOR's next insurance renewal (October 1). The CITY's requirements shall not be unreasonable, but shall be adequate in the sole opinion of the CITY to protect against the kind and nature of risks which exists at the time a change of insurance is required, or thereafter.
- G. Alternate forms of insurance, that meet the above requirements, must be approved by the CITY's Risk Manager prior to beginning any work under this Agreement.

9. Indemnification

CONTRACTOR agrees to defend, indemnify, hold free and harmless the CITY, and its officers, officials, agents, employees and volunteers, at CONTRACTOR's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the CITY, or its officers, officials, agents, employees or volunteers, arising out of the performance of the CONTRACTOR, its employees, agents and/or authorized subcontractors, of the work undertaken pursuant to the Agreement, specifically including but not limited to the Emergency Transportation Services.

The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the CONTRACTOR, its employees, agents and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the CONTRACTOR, its employees, agents and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the CITY, or its officers, officials, agents, employees or volunteers, based upon the work performed by the CONTRACTOR, its employees, agents and/or authorized subcontractors under this Agreement, whether or not the CONTRACTOR, its employees, agents and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CONTRACTOR shall not be liable for the defense or indemnification of any party for claims, actions, complaints or suits arising out of the sole negligence or willful misconduct of said party.

10. Compliance with RFP Requirements for Operations, Personnel and Safety

Without limiting Contractor's duty to comply with other requirements of the RFP, Contractor understands that throughout the Term of this Agreement Contractor must remain in full compliance with the terms, conditions and requirements of the Contract Documents including, but not limited to the minimum qualifications for provision of the Scope of Work. The failure of Contractor to abide by any of the requirements set forth in the Contract Documents will be considered a breach of this Agreement and will be grounds for termination.

11. Assignment

- A.** Except as provided herein, Contractor may not delegate, transfer or assign its rights or otherwise transfer its obligations, in whole or in part, under the proposed contract to any other person or entity without first obtaining the prior written consent of the City and not for 180 days after the formal contract award. Any such assignment or transfer without the prior written consent of the City shall be void; the attempted assignment shall constitute a breach of the Contract.
- B.** For purposes of this section, the following will be considered to be a "transfer" or "assignment":
 - 1)** Any change in the business structure, including but not limited to, changes from or to: (a) a sole proprietorship; (b) a partnership, including any change in the partners; (c) a corporation, including any change in the shareholders, whether by operation of law or otherwise;
 - 2)** Bankruptcy, an assignment for the benefit of creditors, or the appointment of a receiver; or
 - 3)** A transfer by any of the owners, shareholders or members (whichever is applicable) of Contractor of greater than ten percent (10%) of the ownership interest, stock or membership interest (whichever is applicable) in Contractor's business, issued as of the Effective Date by the Contractor, or the sale or transfer of over twenty-five percent (25%) of the assets of the Contractor. In the event a Contractor experiences regular stock exchanges in excess of the ten percent (10%) threshold, a separate agreement may be negotiated to set a threshold that still provides the City with the protections intended. The stock sale of a publicly traded corporation that does not constitute a change in majority ownership will not be deemed a transfer of ownership for purposes of this Section.

12. Audits and Inspections

At any time during normal business hours, and as often as may reasonably be deemed necessary by the CITY, the CITY may observe and inspect CONTRACTOR's business office, and CONTRACTOR must make promptly available to the CITY for its examination all of CONTRACTOR's records that pertain to performance of the

Agreement. The CITY may audit, examine, and copy any and all CONTRACTOR records pertaining to their performance of the Agreement, including but not limited to, personnel records, daily logs, conditions of employment, and all other data. The CITY's right to inspect CONTRACTOR's business office and any and all records pertaining to their performance of the Agreement will be restricted to normal business hours and reasonable notice shall be given to CONTRACTOR in advance of such inspection.

13. Independent Contractor

- A.** In the performance of this Agreement, CONTRACTOR shall be acting in an independent capacity from the CITY, and not as an agent, employee, partner, or pursuant to any kind of joint venture or partnership with the CITY. The parties understand and agree that CONTRACTOR, its officers, agents and employees (which term specifically includes, but is not limited to, the Transportation Personnel) are not employees of the CITY, and are not entitled to any of the rights, benefits, or privileges of CITY employees including, but not limited to, medical, unemployment, or workers' compensation insurance.
- B.** Neither the CITY, or any of its officers, elected officials, agents, representatives, or employees, shall have any control over the conduct of CONTRACTOR's agent's and employees except as specifically set forth in the Contract Documents. Under no circumstances shall CONTRACTOR or any of its agents or employees represent that they are in any manner agents or employees of the CITY, it being understood that CONTRACTOR its agents and employees are as to the CITY, wholly independent contractors and that CONTRACTOR's obligations to the CITY are solely those prescribed by the Contract Documents.
- C.** CITY has no responsibility whatsoever for the payment of any wages, salary, health benefits, retirement benefits, taxes, or any other benefits that may be due to CONTRACTOR's employees and agents performing Emergency Transportation Services under this Agreement, specifically including but not limited to the Transportation Personnel. CONTRACTOR further acknowledges and agrees that the CITY has no responsibility whatsoever for the filing of any employer related documentation (tax forms, payroll, or otherwise) with the federal, state or local governmental authorities, concerning those persons CONTRACTOR assigns to perform Emergency Transportation Services under this Agreement. The preparation and filing of all employee related documentation shall be the sole responsibility of CONTRACTOR.

14. Compliance With Laws

All services provided by CONTRACTOR pursuant to the Contract Documents must be rendered in full compliance with all applicable federal, state, and local laws, rules, statutes, and regulations. It will be CONTRACTOR's sole responsibility to determine which federal, state, and local laws, rules, statutes, and regulations apply to the services to be performed pursuant to the Contract Documents, and to maintain

compliance at all times throughout the Term of this Agreement.

15. Responsibility

Except as may be specifically stated herein to the contrary, it shall be the responsibility of CONTRACTOR to provide all Transportation Personnel with whatever resources and equipment are necessary to perform the Emergency Transportation Services, and to otherwise satisfy all of the terms and conditions set forth in the Contract Documents at all times during the Term of this Agreement. Except where it may be specifically permitted in the Agreement, CONTRACTOR may not use any outside ambulance service providers or other resources to satisfy its obligations to provide Emergency Transportation Services to the CITY, without first obtaining the prior written consent of the CITY. Notwithstanding the granting of any such approval by the CITY, nothing stated herein shall relieve CONTRACTOR of its duties and responsibilities under the Agreement, and any additional cost incurred shall not be charged to the CITY.

16. Acts or Omissions of Representatives

The acts and/or omissions of the owner(s), officers, operators, officials, employees, agents, and representatives of the CONTRACTOR in the performance of the services and obligations under the Contract Documents shall constitute the acts and/or omissions of the CONTRACTOR.

17. Insolvency

CONTRACTOR shall not, without the prior written consent of the Fullerton City Manager, suffer either the appointment of a receiver to take possession of all, or substantially all of the assets of CONTRACTOR, or make a general assignment of such assets for the benefit of creditors. Any such action taken or suffered by CONTRACTOR under any insolvency or bankruptcy proceeding constitutes a material breach of this Agreement by CONTRACTOR, and all property, equipment or materials assigned by the CITY to CONTRACTOR related to the provision of services under this contract shall be automatically "released" by CONTRACTOR and returned back to the possession and control of the CITY. Following the occurrence of any such event, the Fullerton City Manager may assign such property, equipment or materials to another Emergency Transportation Services provider, in the CITY's sole discretion.

18. Familiarity With Work

By execution of this Agreement, CONTRACTOR warrants that:

- A.** It has thoroughly investigated and considered the Emergency Transportation Services to be performed;
- B.** It possesses any and all licenses which are required under relevant local, State, or Federal law to perform the Emergency Transportation Services contemplated by this Agreement and shall maintain all appropriate licenses during the

performance of this Agreement.

- C. It has expertise in the provision of Emergency Transportation Services as that term is defined in this Agreement;
- D. It carefully considered how the Emergency Transportation Services should be performed; and
- E. It fully understands the difficulties and restrictions attending the performance of the Emergency Transportation Services under this Agreement.

19. Validity

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any of the other provisions of this Agreement.

20. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action relating to or arising out of this Agreement shall be subject to the jurisdiction of the County of Orange, California.

21. Entire Agreement

This Agreement supersedes any and all other agreements whether oral or written, between the parties hereto with respect to the subject matter hereof, and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement or modification of this Agreement shall be effective only if executed in writing and signed by both CITY and CONTRACTOR.

22. Attorney's Fees

In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the Court to be reasonable.

23. Representatives and Notices

The City Manager or his designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the CITY, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Vishal Raj _____ shall be the representative of

CONTRACTOR for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of CONTRACTOR, called for by this Agreement, except as otherwise expressly provided in this Agreement. All notices and written communications sent by one party to the other shall be personally delivered or sent by registered or certified U.S. Mail, postage prepaid, return receipt requested, to the following addresses indicated below:

If to City: Attn: City Manager
 City of Fullerton
 303 W. Commonwealth Ave.
 Fullerton, California 92832

If to CONTRACTOR: Attn: Vishal Raj
 Managing Director, Orange County
 1517 W. Braden Court
 Orange, CA 92868

The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or forty-eight (48) hours after deposit in the U.S. Mail as reflected by the official U.S. postmark. Either party may change its address by giving notice in writing to the other party.

24. Waiver

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought, referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

25. Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

26. Cooperation

CONTRACTOR must cooperate with the CITY and take all actions necessary to ensure that all terms and conditions, and required performance levels, set forth in the Contract Documents are satisfied at all times throughout the Term of the Agreement.

27. Legal Action

In addition to any other rights or remedies, either Party may take legal action, in law

or in equity, to cure, correct, or remedy and default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

28. Amendment

This Agreement may be amended only by the written mutual consent of CITY and CONTRACTOR.

29. Additional Services

CONTRACTOR shall not receive compensation for any services provided outside the scope of the Contract Documents unless such additional services are approved in writing by CITY prior to CONTRACTOR performing the additional services. It is specifically understood that oral requests or approvals of such additional services, change orders, or additional compensation, and any approvals from the CITY, shall be barred and are unenforceable.

30. Counterparts

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one Agreement.

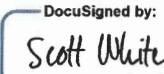
31. Corporate Authority

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so the Parties hereto are formally bound to the provisions of this Agreement.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all formalities required by law on the respective dates set forth opposite their signatures.

"CONTRACTOR"
Falck Mobile Health Corp.

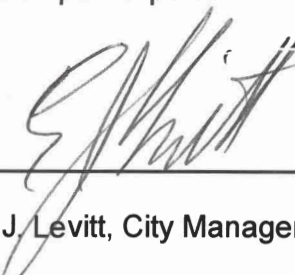
By: 
79EB21B2228C497...

Title: Scott White, Reg. Managing Dir

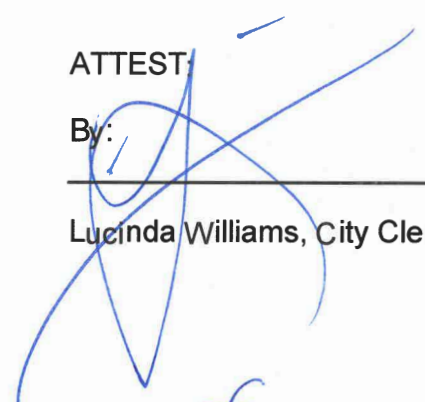
DocuSigned by:

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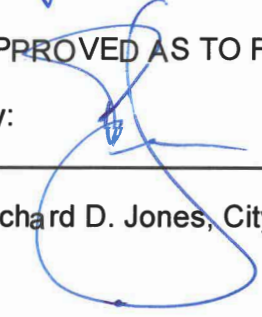
"CITY"
THE CITY OF FULLERTON
a municipal corporation

By: 
Eric J. Levitt, City Manager

ATTEST

By: 
Lucinda Williams, City Clerk

APPROVED AS TO FORM:

By: 
Richard D. Jones, City Attorney