

Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

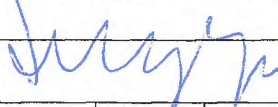
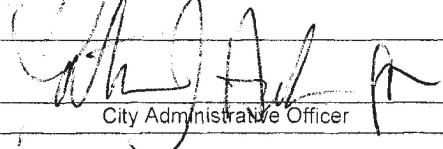
To: The Mayor The City Council	Date: 10-21-16	C.D. No. --	CAO File No.: 0150-10841-0000
Contracting Department/Bureau: Los Angeles Fire Department		Contact: William Jones (213) 978-3461	
Reference: Board of Fire Commissioners report dated September 7, 2016			
Purpose of Contract: To provide a field data collection system to automate the collection of Emergency Medical Services patient data for the Los Angeles Fire Department			
Type of Contract: () New contract (X) Amendment		Contract Term Dates: Three additional years, from September 24, 2016 through September 23, 2019, for a total contract term of nine years, from September 24, 2010 through September 23, 2019	
Contract/Amendment Amount: \$4,896,884			
Proposed amount \$ 4,896,884 + Prior award(s) \$ 9,961,960 = Total \$ 14,858,844			
Source of funds: General Fund: Los Angeles Fire Department Fund 100/38, Contractual Services Account No. 003040			
Name of Contractor: Physio-Control, Inc.			
Address: 11811 Willows Road NE, Redmond, Washington 98052			
	Yes	No	N/A*
1. Council has approved the purpose	X		
2. Appropriated funds are available	X		
3. Charter Section 1022 findings completed	X		
4. Proposals have been requested	X		
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in the City: %			
8. Contractor has complied with:			
	Yes	No	N/A*
a. Equal Employment. Oppty./Affirm. Action	X		
b. Good Faith Effort Outreach**	X		
c. Equal Benefits Ordinance	X		
d. Contractor Responsibility Ordinance	X		
e. Slavery Disclosure Ordinance	X		
f. Bidder Certification CEC Form 50	X		
*N/A = not applicable ** Contracts over \$100,000			

RECOMMENDATION

That the City Council, subject to the approval of the Mayor, authorize the Fire Chief, or designee, to execute the Second Amendment to the professional services agreement C-117907 on behalf of the City with Physio-Control, Inc. to provide a field data collection system for the electronic collection of Emergency Medical Services patient data for a term of three years from September 24, 2016 through September 23, 2019, and an amount of \$4,896,884, in accordance with Exhibit C – Fee Schedule in the attached Amendment, subject to the approval of the City Attorney as to form.

SUMMARY

The Los Angeles Fire Department (LAFD) requests authority to execute a Second Amendment to the professional services agreement C-117907 with Physio-Control, Inc. to continue providing a field data collection system to automate the collection of Emergency Medical Services (EMS) patient data and streamline the EMS billing and collections process. The proposed Second Amendment exercises the first three-year renewal option to extend the agreement from September 24, 2016 through September 23, 2019, for a total contract term of nine years; updates the hardware and payment schedule and increases the total contract amount by approximately \$4.9 million to a total contract amount of \$14.86

 JCY	Analyst	04170037	Assistant CAO	 City Administrative Officer
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million; and adds a provision for discount due to delay of delivery. Based on the revised hardware and compensation schedule, the estimated cost of the agreement is approximately \$4.9 million over the three-year term.

BACKGROUND

The original agreement with Physio-Control (previously Scan Health, Inc., dba Sansio) was authorized for six years, from September 24, 2010 to September 23, 2016, with the option to extend the term of the agreement for six additional three-year periods. Physio-Control provides a proprietary Field Data Collection Software System (FDCS) and related hardware and support to generate electronic Patient Care Records (PCRs). The system interfaces with the EMS billing software system, which then electronically transfers relevant data from the electronic PCRs to create billing invoices and records for a fully streamlined and secure EMS patient data, billing and collections process.

The original agreement with Physio-Control was the result of an LAFD procurement process initiated in 2007 for an FDCS and EMS billing and collections system (EMSS) to replace paper record and manual billing systems. Changing from a paper-based to secure electronic system was necessary in order for the LAFD, as an EMS provider, to be in compliance with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, which required PCRs to be in a secure, encrypted electronic format by 2014. The PCR entry system and subsequent tracking and billing have now been fully computerized and transitioned successfully into automated systems.

The First Amendment to the agreement, executed January 29, 2016, reflected the acquisition of the original contractor, Scan Health, Inc., dba Sansio, by Physio-Control and the subsequent assignment of the City contract to Physio-Control.

The agreement with Physio-Control provides the LAFD with licenses for Physio-Control's proprietary FDCS software, dedicated support, training and a "lease-to-own"-type hardware replacement schedule. The contract terms also provide for a refresh of hardware, with compatible software, every three years. At the conclusion of each three-year cycle, LAFD works with Physio-Control to determine the new hardware and software needs. The proposed Second Amendment reflects a three-year lease of 545 new rugged tablets, per Exhibit C of the attached proposed Amendment. At the end of the three-year term, ownership of the tablets transfers to the City in "as-is" condition. The LAFD also has the opportunity to lease additional units, add software functions/options, and request additional support at the negotiated rates. The three-year estimated cost of the proposed agreement, including the options, is \$4.9 million, or \$1.63 million per year. This annual cost is on par with the annual cost of the original agreement.

Discounts for Delay of Delivery

During its consideration of the proposed Second Amendment on September 9, 2016, the Board of Fire Commissioners (Board) expressed concerns about the delayed rollouts of software upgrades. A new software upgrade is currently available, but is not expected to be accessible to the LAFD until December 2016 when pilot testing is scheduled to begin. The Board discussed a shortened agreement term of 18 months in the event a new vendor could be considered at an earlier date if Physio-Control could not meet agreed upon implementation schedules.

While the agreement specifies a hardware replacement every three years, the software component is to be provided "of greater or equal functionality as approved by the LAFD" (Proposed Second Amendment, Section 2.0 Hardware). The LAFD reports that the current hardware and accompanying software is up to its standards and that it is working with Physio-Control to modify the new software to its requested standards for a mutually agreed upon implementation in December for pilot testing.

To further address the Board's concerns, the LAFD negotiated with Physio-Control to include a new provision in the proposed Second Amendment, Section 8.4 Discounts for Delay of Delivery, with specific detail in Exhibit C – Attachment B MobileTouch Implementation Milestones. In the event any one or more of the key implementation milestones identified are not met by Physio-Control according to the agreed-upon schedule, the LAFD will be entitled to a software discount for the delay of delivery.

In consideration of a shortened agreement term, the three-year hardware lease schedule and overall payment terms would have to be re-negotiated, possibly resulting in a less favorable rate. The LAFD is confident that with its existing positive relationship with Physio-Control and the new provision for discounting if delivery is delayed, that Physio-Control will be able to meet the terms of the agreement to the satisfaction of the LAFD. A three-year agreement extension term is recommended.

FISCAL IMPACT STATEMENT

Approval of the recommendation will authorize the Los Angeles Fire Department to extend its agreement with Physio-Control, Inc. to provide a field data collection system for the electronic collection of Emergency Medical Services (EMS) patient data for a term of three years at a compensation amount of \$4,896,884, or approximately \$1.63 million per year. Funding of \$1.76 million is available in the Department's current Contractual Services account for this purpose. Funding for future years will be subject to the appropriation of funds in the annual budget process. No additional General Fund impact is anticipated. Execution of the proposed contract amendment is in compliance with the City's Financial Policies in that budgeted funds are used for budgeted purposes and that current operations are funded by current revenues.

MAS:JCY:04170037

Attachments

- Revised Second Amendment
- Revised Exhibit C

**RESTATEMENT AND SECOND AMENDMENT TO AGREEMENT NUMBER C-117907
BETWEEN
THE CITY OF LOS ANGELES
AND
PHYSIO-CONTROL, INC.
FOR FIELD DATA COLLECTION SYSTEM (FDCS)**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as the "CITY"), acting by and through the Los Angeles Fire Department (hereinafter referred to as the "LAFD"), and Physio-Control, Inc., (hereinafter referred to as "CONTRACTOR"), with reference to the following:

WHEREAS, the City Council instructed the LAFD to prepare and release a Request For Proposals ("RFP") for emergency medical service ("EMS") billing services and technology improvements including mobile field data capture devices; and

WHEREAS, the CITY issued the RFP and found that ScanHealth, Inc. (dba Sansio) proposal satisfied the CITY's requirements for mobile field data capture devices and the software and program support sufficient to transmit the CITY's EMS data lawfully and efficiently to the necessary recipients; and

WHEREAS, the CITY performed its Charter Section 1022 evaluation and the Personnel Department determined that the Agreement does not require a Charter 1022 finding because the proposal is for materials proprietary to Sansio, and Sansio's staff is required to install, maintain and service its Licensed Software; and

WHEREAS, the CITY executed City Contract C-117907 with ScanHealth, Inc. (dba Sansio), a Minnesota corporation on September 24, 2010 (C.F. 10-1078)

WHEREAS, on January 31, 2014, CONTRACTOR acquired ScanHealth, Inc. (dba Sansio) along with all its contractual obligations. ScanHealth, Inc. (dba Sansio) is now a wholly-owned subsidiary of CONTRACTOR. By operation of acquisition, ScanHealth, Inc. (dba Sansio) has assigned this Agreement to CONTRACTOR and now has requested the CITY to accept said assignment in accordance with Section 7. Assignment of the Agreement; and

WHEREAS, CONTRACTOR's proposed services are expert and technical in nature; and

WHEREAS, it is more economical to automate the CITY's emergency medical service field data capture function than to continue capturing the data manually, because automation facilitates more efficient transmission of Protected Health Information ("PHI"); and

WHEREAS, automating and encrypting PHI through this Agreement facilitates the CITY's compliance with the Health Insurance Portability and Accountability ("HIPAA") statutes and other privacy laws; and

WHEREAS, the CITY desires to contract with CONTRACTOR to license field data capture software and lease emergency medical service mobile field data capture equipment; and

WHEREAS, the CITY in the First Amendment to Agreement C-117907 agreed to the Assignment of the Agreement to CONTRACTOR on January 29, 2016; and

WHEREAS, the CITY and CONTRACTOR desire in this Restatement and Second Amendment to Agreement No. C-117907 to execute the first renewal option and extend the term to September 24, 2019, increase the ceiling amount from \$9,961,960 to \$14,858,844, restate the continuing terms and incorporate additional amendments; and

NOW THEREFORE, in consideration of the premises, representations, covenants and agreements set forth herein, the Parties represent, covenant and agree as follows:

GLOSSARY OF TERMS:

CITY Systems means the Computer Aided Dispatch ("CAD"), Electrocardiograph ("EKG"), the CITY's designated medical billing associate (Advanced Data Processing, Inc., a subsidiary of Intermedix), the Hospital Association of Southern California and any other such computer systems that the Fire Chief requests from time to time, during the term of this Agreement.

Data Center means the CONTRACTOR's infrastructure, services and software that support the System.

Hardware means the tablets and any other equipment the CONTRACTOR provides to facilitate use of the tablets, as itemized in Exhibit C - Fee Schedule; or, any other product(s) of equal or greater value and of equal or lesser cost.

Licensed Software means the HealthEMS® field data capture software, or other software of equal or better functionality that is acceptable to LAFD, which is licensed to the CITY for use under this Agreement.

System means the Licensed Software, Hardware, and the Data Center services.

Tablet means the data capture device, selected by LAFD, to support the Licensed Software.

1.0 PARTIES TO THE AGREEMENT AND REPRESENTATIVES

1.1 Parties to the Agreement

The Parties to this Agreement are:

- a. The CITY, by and through the LAFD, having its principal office at 200 North Main Street, 18th floor, Los Angeles, California 90012.
- b. CONTRACTOR, having its principal address at 11811 Willows Road NE, Redmond, Washington 98052 with its Data Solutions team (performing staff) located at 11East Superior Street, Suite 310, Duluth, Minnesota 55802.

1.2 Representatives of the Parties

The representatives of the Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

- a. The CITY's representative is, unless otherwise stated in the Agreement:

Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department

200 North Main St., Room 1800
Los Angeles, California 90012
(213) 978-3838
(213) 978-3814 fax
ralph.terrazas@lacity.org

And:

June Gibson, Fire Administrator
Los Angeles Fire Department
200 North Main St., Room 1630
Los Angeles, California 90012
(213) 978-3731
(213) 978-3414 fax
june.gibson@lacity.org

- b. The CONTRACTOR's representatives are, unless otherwise stated in the Agreement:

Dale A Pearson, General Manager
Physio-Control, Inc.
11 East Superior Street, Suite 310
Duluth, Minnesota 55802
(218) 625-7226 Ext. 7217
(218) 625-7225 fax

Legal Counsel Physio-Control, Inc.
11811 Willows Road
P.O. Box 97006
Redmond, Washington 98052
(800) 442-1142
(425) 867-4227 fax

1.3 Notices

- a. Formal notices, demands and communications to be given hereunder by either party must be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date received.
- b. If the name of the person designated to receive the notices, demands, or communications, or the address of such person is changed, written notice shall be given in accordance with this section, within five (5) working days of said change.
- c. Informal communications regarding daily business matters shall be made via email or telephone.

2.0 HARDWARE

The CONTRACTOR shall lease the Hardware to LAFD in the quantities and at the rates provided in Exhibit C—Fee Schedule, as amended from time to time and included herein. CONTRACTOR shall provide all new Hardware and all necessary software, of greater or equal functionality as approved by LAFD, at the execution of the first option to renew this Agreement in 2016. The first device supplied to the LAFD by CONTRACTOR under this Agreement in January 2011, covering months 1 to 36 of this Agreement, was the Panasonic CF-19; the second device supplied to the LAFD in 2014 covering months 37 to 72 of this Agreement, was the Panasonic G-1; and, the third device approved by the LAFD in 2017, covering months 73 to 108 of this Agreement, is the GETAC RX10. This Hardware shall be provided in a manner consistent with Exhibit C. CONTRACTOR shall provide the replacement Hardware and Licensed Software burn in services, every three (3) years, in accordance with Exhibit C, and as Parties exercise future renewal options.

CONTRACTOR retained ownership of the Hardware provided for use in the initial 3 year term (Hardware Performance Period) of the Agreement. The Parties agree that the LAFD will accept ownership of the Panasonic G-1 devices at no additional cost to the CITY at the time the devices are exchanged for the GETAC RX10 devices. At the conclusion of month 108 of the Agreement, the CONTRACTOR agrees to offer the GETAC RX-10 devices to the LAFD at no additional cost. The CITY agrees to accept all the devices "AS-IS", with no expressed warranty considered or offered by the CONTRACTOR.

In the event that the Parties determine that it would be more advantageous to procure Hardware other than that currently identified in Exhibit C; and the Parties agree that using the more advantageous Hardware will not increase the cost of this Agreement in any way or decrease the quality of the Hardware provided under this Agreement, the Parties may make the necessary changes to Exhibit C upon written approval of the Fire Chief.

CONTRACTOR shall provide the LAFD the option to acquire additional Hardware at the rates specified in Exhibit C, to accommodate increases to the LAFD fleet and operations.

CONTRACTOR shall retain ownership of the Hardware during the initial three (3) year term (Hardware Performance Period) the devices are in service. At the conclusion of the Hardware Performance Period of this Agreement, the LAFD agrees to accept ownership of the field data capture devices from the CONTRACTOR at no additional cost to the CITY. The CITY agrees to accept all the devices "AS-IS", with no expressed warranty considered or offered by the CONTRACTOR.

3.0 TERM OF AGREEMENT

The term of this Agreement commenced on September 24, 2010 and shall remain in full force and effect for a nine (9) year period from that date, unless terminated earlier as provided herein. The CITY, at its sole discretion, may exercise five (5) additional options to extend the term of this agreement in three (3) year increments.

Where the LAFD requires services to continue uninterrupted to meet the demands of providing emergency medical services to the Los Angeles Community, and where these services are consistent with the Terms and Conditions of this Agreement, those services are hereby ratified and covered.

4.0 PROCEDURES MANUAL

The Parties shall develop and maintain a Procedures Manual, which may be adjusted from time to time, governing the manner in which the Parties will conduct daily business. Either Party's failure to comply with practices established in such Manual may be deemed to be a material breach of the Agreement, subject to the provisions in Section 12 Standard Provisions of this Agreement. The Parties agree to review and consider updates to the procedure manual on a quarterly basis. If updates are required and not provided by the CONTRACTOR, then the CITY may delay payments to CONTRACTOR until such updates are provided.

5.0 SOURCE CODE ESCROW AGREEMENT

In order to provide the CITY with controlled access to the source code of CONTRACTOR's Licensed Software, CONTRACTOR has entered into a Source Code Escrow Agreement with Iron Mountain Intellectual Property Management (formerly DSI Technology), 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071. CONTRACTOR shall add the CITY as beneficiary to the Source Code Escrow Agreement, Exhibit G, prior to the date of the Project Plan meeting required under Section 6.2. Failure to do such shall constitute a material breach of this Agreement. Once enrolled as a beneficiary, the CITY shall be issued an enrollment letter and a copy of the escrow agreement from Iron Mountain. There are no fees for the CITY to be enrolled as a beneficiary of the escrow agreement.

In addition, to ensure system continuity in the event the CITY needs to access the Licensed Software without CONTRACTOR interaction, CONTRACTOR shall submit compiled programs with installation instructions and Hardware requirements with the escrow agent, as updated from time to time, but at a minimum every six (6) months.

6.0 SERVICES TO BE PROVIDED

6.1 Transition

CONTRACTOR and LAFD agree that they shall fully cooperate with each other in transitioning from the LAFD's current manual EMS field data capture system to the CONTRACTOR's System.

6.2 Project Plan

Within fifteen (15) days of the effective date of this Agreement, CONTRACTOR must conduct a planning meeting with the CITY's Project Manager and present a draft Project Plan for evaluation. Within fifteen (15) days of the planning meeting, CONTRACTOR must deliver a Project Plan, acceptable to the LAFD, which shall include a timeline, goals, objectives and tasks to be completed during the transition period. The Parties shall notify each other immediately upon discovering that revisions to the Project Plan are necessary.

6.3 System Support

- a. CONTRACTOR shall provide System support for the duration of this Agreement. CONTRACTOR's Solution Center will be staffed Monday - Friday, 7AM- 6PM Central Time, excluding CONTRACTOR's holidays. After hours or "non-prime" hours include 6PM - 7AM Central Time Monday - Thursday; 5PM Central Time on Friday through 7AM Central Time the following Monday; and, CONTRACTOR's holidays. Requests for support, other than those relating to System Availability, initiated during non-prime hours shall be addressed no later than the next business day. Inquiries regarding System Availability shall be supported by technical staff during non-prime Solution Center hours.
- b. In addition to the support provided through the Solution Center, CONTRACTOR shall provide one (1) consultant on a full-time basis, dedicated solely to this Project, stationed at the CITY site designated by the LAFD, for the term of this Agreement. The consultant shall support the CITY during regular CITY business hours for the duration of this Agreement, unless otherwise agreed by the Parties.
- c. In addition to the support provided through the Solution Center, CONTRACTOR shall provide one part-time consultant at a designated location of CONTRACTOR's choice, from the "All Stations Live Date" through the term of this Agreement, unless otherwise agreed by the Parties.
- d. CONTRACTOR shall respond to 95% of LAFD's Systems related questions within five (5) minutes during Solution Center hours. System Availability issues will be resolved within twenty four (24) hours. All inquiries will be tracked with a unique "ticket" identifier in CONTRACTOR's proprietary Customer Relations Management system, available to LAFD personnel through the System, displaying response and resolution times and correspondence activity.
- e. The Parties shall determine the full extent of the need for on-site consultants as the Project proceeds. Consultants' responsibilities shall be reflected in the Procedures Manual. If additional consultants are necessary to aid in the performance of this Agreement, the parties will provide for such through amendment.

6.4 Integration

- a. CONTRACTOR shall integrate its Licensed Software with LAFD's Computer Aided Dispatch ("CAD") system. Specific file formats to be used and timing of such file transfers shall be agreed upon by CONTRACTOR and LAFD, and shall be reflected in the Procedures Manual. Such integration shall conform to CITY specifications.
- b. CONTRACTOR System shall be capable of receiving and transmitting LAFD's EKG defibrillator data in near real-time. Specific file formats and timing of such file transfers shall be agreed upon by CONTRACTOR and

LAFD and shall be reflected in the Procedures Manual. Such integration shall conform to CITY specifications.

- c. CONTRACTOR shall integrate, at its expense, CONTRACTOR's Licensed Software with the CITY's designated ambulance billing system, at the LAFD's direction for the duration of this Agreement. Specific file formats and timing of such file transfers shall be agreed upon by CONTRACTOR and LAFD and shall be reflected in the Procedures Manual. Such integration shall conform to CITY specifications.
- d. CONTRACTOR shall integrate its emergency room module with the Hospital Association of Southern California's ReddiNet system, supporting wireless transfer of pre-hospital data collected in the field to the destination facility. The emergency room module shall be provided free of charge to all ReddiNet facilities receiving patients from LAFD. Specific file formats and timing of such file transfers shall be agreed upon by CONTRACTOR and LAFD and shall be reflected in the Procedures Manual. Such integration shall conform to CITY specifications.
- e. Integration shall be complete when CONTRACTOR ensures that the CONTRACTOR's Licensed Software is fully compatible with CITY Systems, and data may be transferred from CITY Systems to CONTRACTOR's Systems, and back. CONTRACTOR agrees to provide system integration services, at no additional fee, for access to or interface with any CITY Systems. The CITY will provide any required third-party software licenses, software development kits (SDKs), application program interface (API) fees, or access fees.

6.5 Data Center Services

- a. System Maintenance. CONTRACTOR will provide Licensed Software upgrades and enhancements at the same time as generally available to other licensees, or when required by law, whichever is earlier. CONTRACTOR is responsible for installing upgrades and enhancements for LAFD's use at no charge to LAFD.
- b. System Access Level. CONTRACTOR is not responsible for loss of access to the Data Center for reasons that are beyond CONTRACTOR's reasonable control. With the exception for loss of access that is beyond CONTRACTOR's reasonable control, CONTRACTOR shall maintain a level of access to the Data Center (excluding periods of emergency maintenance) of 99.8% Access Availability twenty four (24) hours a day, seven (7) days a week, including holidays. System Access Unavailable is defined as the reported unscheduled inability of all subscribed users of LAFD to access the Data Center and verification that the problem is within the Data Center. Total System Access Unavailable minutes are calculated by adding the period of time beginning when LAFD reports System Access Unavailable to CONTRACTOR's Solution Center and ending when CONTRACTOR's Solution Center corrects the unavailable status and closes the incident with LAFD. If LAFD does not initiate a Solution Center call, CONTRACTOR will not be obligated to issue a Credit for the System Access Unavailability. CONTRACTOR will compute any

System Access Unavailability on a quarterly average basis and apply a System Access Unavailable Credit to the next LAFD invoice in the event that the stated Access Availability commitment was not met. This occurs on a prorated basis limited to the maximum of the total invoice charges based on the total billing period. System Access Unavailable Credits will not be given for events occurring during any period in which LAFD's account has an undisputed past due balance or LAFD is otherwise in breach of this Agreement. The System Access Unavailable Credit will be calculated according to the following schedule:

System Access Levels			System Access Unavailable Credits
99.80%	to	100%	Covered under Agreement
99.50%	to	99.79%	1 day credit
98.50%	to	99.49%	2 days credit
97.50%	to	98.49%	1 week credit
96.50%	to	97.49%	2 weeks credit
0%	to	96.49%	1 month credit

- c. Backups. Backups of hosted applications and data are performed on a weekly (full) and nightly (incremental) basis. Backups will be scheduled at times so as to provide minimal impact to LAFD's business activity. CONTRACTOR will maintain a copy of at least one full backup copy until after the next [daily/weekly] backup is performed. Backup will be maintained on a rolling basis and CONTRACTOR will not be responsible for archiving more than the most recent full (daily or weekly) backup. CONTRACTOR will take commercially reasonable steps to maintain data integrity in any backup.
- d. Disaster Recovery Plan. CONTRACTOR shall have a disaster recovery and business restoration plan in place. CONTRACTOR shall test disaster recovery capabilities annually to ensure that data can be retrieved and made available to the LAFD. Disaster test reports shall be submitted to the LAFD for review. LAFD may audit the data backed up as well as the disaster recovery and business restoration plan annually.

6.6 Training

- a. CONTRACTOR shall provide reasonably necessary training, as requested by LAFD, regarding effective use of CONTRACTOR's System.
- b. CONTRACTOR shall notify LAFD personnel of developments in the laws that impact the System and provide training regarding such developments, as requested by LAFD.
- c. CONTRACTOR shall assist the LAFD in its development and maintenance of a written plan that provides for LAFD's ongoing efforts to comply with the laws, which impact the System, as they develop during the term of this Agreement.

6.7 Security

CONTRACTOR shall use all reasonable efforts under the law to maintain the security of the Licensed Software and data, but shall not be responsible for the CITY's loss or dissemination of passwords or other breaches beyond CONTRACTOR's reasonable control.

6.8 Standards/Laws

CONTRACTOR shall conduct data collection efforts in compliance with all CITY ordinances, State, and Federal laws, and rules governing the services provided under this Agreement.

6.9 Reports

- a. CONTRACTOR shall establish a reporting system that will enable the LAFD to monitor the performance of the Services. Reports must be designed to give the LAFD the information needed to accurately measure performance.
- b. CONTRACTOR shall provide the reports specified in Exhibit B - Reports, any other reports required by Federal, State, or Local regulatory bodies, and any other reports that CONTRACTOR provides in the normal course of business.
- c. CONTRACTOR shall provide customized reporting capability, as provided in the Procedures Manual.

6.10 Access to and Maintenance of Records

- a. Access to data shall be limited to the employees, representatives and agents of CONTRACTOR and authorized personnel of CITY. All Staff shall follow the established CITY-CONTRACTOR procedures in the Procedures Manual with regard to authorization to access the Software.
- b. CONTRACTOR shall maintain records in an electronic format that meets all Federal and State requirements for maintaining patient medical information. CONTRACTOR may not destroy data without written approval of the Los Angeles City Attorney.
- c. CONTRACTOR shall maintain records, in electronic form, in accordance with requirements prescribed by the LAFD. Said records will be subject to examination and audit by authorized LAFD personnel or by the LAFD's representative at any time during the term of this Agreement. The CONTRACTOR shall provide any reports requested by the LAFD. All records must be returned to the LAFD upon expiration or termination of this Agreement, whichever occurs first.
- d. CONTRACTOR shall ensure that **all** required documentation and Agreements regarding changes to industry regulations affecting collection of pre-hospital data are filed and maintained, as a means of maintaining resources and facilitating knowledge transfer to future CONTRACTOR and CITY staff.

6.11 Licenses and Property Rights

a. License

CONTRACTOR hereby grants to LAFD and all persons designated by the Fire Chief a non-exclusive, non-transferable (except as provided in this Agreement) license to access the Licensed Software through the Internet. CONTRACTOR shall host and deploy the System.

b. Property Rights of CONTRACTOR in the licensed Software

1. Notwithstanding any provision to the contrary herein, or in any document ancillary hereto, it is understood and agreed that the LAFD requested a Commercial Off-the-Shelf (COTS) Field Data Capture System and that CONTRACTOR is granting a non-exclusive, non-transferable (except as provided in this Agreement) license to access the System and related documentation. The LAFD acknowledges that the System and other proprietary materials supplied by CONTRACTOR to LAFD are and shall remain the property of CONTRACTOR and nothing in this Agreement shall be construed as transferring any aspect of such rights to LAFD or any third party. For the term of this Agreement, the LAFD shall use and access the System as defined herein. Any changes, additions, and enhancements in the form of new or partial programs or documentation as may be provided under this Agreement shall remain the proprietary property of CONTRACTOR.
2. Unauthorized Acts. LAFD agrees to notify CONTRACTOR, as soon as practical, of the unauthorized possession, use, or knowledge of any item supplied under this license and of other information made available to LAFD under this Agreement, by any person or organization not authorized by this Agreement to have such possession, use or knowledge. LAFD will promptly furnish full details of such possession, use or knowledge to CONTRACTOR, will assist in preventing the continuation or recurrence of such possession, use or knowledge, and will cooperate with CONTRACTOR in any litigation against third parties deemed necessary by CONTRACTOR to protect its proprietary rights. LAFD's compliance with this subparagraph shall not be construed in any way as a waiver of CONTRACTOR's right, if any, to recover damages or obtain other relief against LAFD for its negligent or intentional harm to CONTRACTOR's proprietary rights, or for breach of contractual rights.
3. Remedies. If LAFD attempts to use, copy, license, sub-license or otherwise transfer the Licensed Software or access to the System supplied by CONTRACTOR under this Agreement, in a manner contrary to the terms of this Agreement, whether these rights are explicitly stated, determined by law, or otherwise, CONTRACTOR shall have the right to injunctive relief enjoining such action, in addition to any other remedies available. LAFD acknowledges that remedies at law may be inadequate.

6.12 Warranty

a. Software

For duration of this Agreement (the "Warranty Period"), CONTRACTOR will checkout, document and deliver any amendments or alterations to the Licensed Software that may be required to correct errors which significantly affect performance. This warranty is contingent upon LAFD advising CONTRACTOR in writing of such errors. CONTRACTOR shall not be responsible for maintaining LAFD-modified portions of the Licensed Software. Corrections for difficulties or defects traceable to LAFD errors or System changes will be billed at standard CONTRACTOR's time and materials rates.

b. Hardware

CONTRACTOR has included in the cost of this Agreement an extended manufacturer's warranty, as provided in Exhibit C. The cost of the manufacturer's warranty for the Hardware replaced at the conclusion of the sixth (6th) year of this Agreement execution of the first option to renew this Agreement in 2016 is also included in the Exhibit C of this, included herein this Second Amendment. CONTRACTOR undertakes no other obligation with regard to lost or damaged Hardware.

c. Warranty

The warranty set forth in this Agreement is the only warranty made by CONTRACTOR. CONTRACTOR expressly disclaims, and LAFD hereby expressly waives, all other warranties express, implied or statutory, including warranties of merchantability and fitness for a particular purpose. CONTRACTOR does not warrant that the Licensed Software will meet LAFD's requirements, except as expressly set forth in this Agreement, or that the operation of the Licensed Software will be uninterrupted or error-free, or that except as required herein to address errors that significantly affect performance, errors in the Licensed Software will be corrected. CONTRACTOR's limited warranty is in lieu of all liabilities or obligations of CONTRACTOR for the damages arising out of or in connection with the installation, use or performance of the System.

d. Limitation of Liability

With regard to claims by CITY against CONTRACTOR relating to CONTRACTOR's performance of the Contract, including without limitation claims for breach of warranty and claims of professional negligence, it is agreed that CONTRACTOR's liability will not exceed \$2,000,000 for any occurrence and in any year of the Contract's term, provided that in no event shall such liability exceed \$10,000,000 for the nine (9) year term the Agreement remains in full force and effect. In no event will either party be liable to the other for any special or consequential damages. Notwithstanding the foregoing, and notwithstanding any other provision of this Agreement to the contrary, no limitation of liability or limitation of warranty or disclaimer shall be applicable to CONTRACTOR's breach of its obligations under Exhibit A - Standard Provisions for City Contracts, PSC-20 Indemnification, or to a party's breach of its obligations under Section 10 and/or Exhibit D - Business Associate Agreement, it being the intent of the respective parties that the breaching party remain fully liable therefore.

7.0 ASSIGNMENT

This Agreement is not assignable by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld. After and upon approved assignment, this Agreement shall bind and inure to the benefit of the Parties and their respective successors, assignees, transferees, and legal representatives.

8.0 COMPENSATION AND METHOD OF PAYMENT

8.1 Compensation

For satisfactory services rendered under this Agreement, the CITY shall pay the CONTRACTOR in accordance with Exhibit C, only for items received and services requested by the LAFD. Payment for optional items will only occur where the Fire Chief has authorized in writing to CONTRACTOR that the LAFD desires to additional services, activate additional software elements, or provide additional accessories for the leased devices. The CITY shall issue a check for the amount invoiced, less any disputed amounts, within thirty (30) days of approval of a complete invoice. CONTRACTOR shall resolve any disputed amounts within sixty (60) days from the date the CITY gives notification of a dispute.

8.2 Taxes

Through prior arrangement with CONTRACTOR, CITY agrees to remit sales tax directly to the State of California Board of Equalization.

8.3 Method of Payment

- a. The CONTRACTOR must include the following information, and any other documentation requested by the LAFD, in each invoice:
 1. Date of invoice
 2. Invoice number
 3. Agreement number
 4. Description of services
 5. Amount of Invoice and the supporting documentation.
- b. Except as otherwise expressly provided for in this Agreement, all other costs incurred by CONTRACTOR in the performance of the CONTRACTOR Services (including, but not limited to postage, materials, communications and phone costs and other operating costs) shall be CONTRACTOR's sole responsibility.
- c. Interests and Costs. Undisputed amounts not paid when due will bear interest at the rate of 1.5% per annum on the unpaid balance each month, or such lesser rate of interest as shall be the maximum amount chargeable with respect to this account under the law in effect in the State of California.
- d. Taxes: CONTRACTOR is required to collect sales tax on products and services provided to customers under the laws and tax code governing the State of California and any local tax authorities. The Hardware described in

Exhibit C is subject to sales tax. The Licensed Software and consulting labor will not be taxed unless required by law at some time in the future.

8.4 Discounts for Delay of Delivery

The Parties have agreed to the delivery time-table in Exhibit C– Attachment B, which provides milestones related to implementing new software. In the event any one or more of these key milestones are not met by the CONTRACTOR, the LAFD will be entitled to a discount for the delay of delivery of the new software as outlined in Exhibit C – Attachment B.

9.0 KEY PERSONNEL

9.1 LAFD Key Personnel

a. Project Manager as designated by the Fire Chief.

b. System Administrator.

The System Administrator shall be designated by the LAFD Information Systems Manager (ISM) the Policy Manual referenced in Section 4.0 of this Agreement.

c. Authorized Users.

The LAFD shall, through its Management Information Systems Section, maintain a list of authorized users to the CONTRACTOR's System, which will be reviewed and updated as changes occur.

9.2 CONTRACTOR Key Personnel

a. Exhibit F - Staff Assignment Table, provided by CONTRACTOR, lists the Project Manager, all Key Personnel and their assignments during the project, including any Subcontractor personnel. The table contains all key assigned personnel who have been approved for work on this project, including replacement personnel who may be substituted for an assigned staff member should they be ultimately be unavailable. Payment requirements for Exhibit F services are included in Exhibit C – PCDS Consultants.

b. The LAFD reserves the right to approve or disapprove key personnel. The LAFD will allow a CONTRACTOR or Subcontractor to substitute out key personnel upon LAFD written approval. Replacement of reassigned personnel, if approved, shall be with personnel with equal or greater ability and qualifications, and provided at no charge for their first ten (10) business days following their start date to bring the replacement up to speed. In addition, LAFD reserves the right to require a replacement of employees whom LAFD judges to be unsuitable, or whose continued use is deemed to be contrary to the best interest of the LAFD.

10.0 CONFIDENTIALITY

10.1 Confidentiality.

- a. Confidential Information. The parties agree that any Confidential Information provided under this Agreement shall be held and maintained in strict confidence, subject to applicable statutory requirements regarding public records. Each party agrees to protect the Confidential Information of the other party in a manner consistent with the protections used to protect its own Confidential Information, including, without limitation, informing its employees of its obligations under this Agreement and taking such steps as are reasonable in the circumstances, or as reasonably requested by the other party, to prevent any unauthorized disclosure, copying or use of Confidential Information. Confidential Information means any proprietary or other information that is required or allowed to be maintained in confidence under the laws governing a municipal corporation. Confidential Information shall also include Protected Health Information as defined in Exhibit D - Business Associate Agreement. The LAFD recognizes that the CONTRACTOR may desire to protect information relating to its business from disclosure under the California Public Records Act under circumstances when the CITY determines that disclosure is otherwise appropriate. Therefore, the LAFD shall notify the CONTRACTOR of every California Public Records request, immediately upon receipt.
- b. The CONTRACTOR must ensure that each individual sent on an assignment under this Agreement shall have executed a Confidentiality Agreement prior to commencing any assignment. CONTRACTOR agrees to provide the signed Confidentiality Agreement to the LAFD prior to commencing any assignment. The Confidentiality Agreement to be used is attached hereto as Exhibit E. The CONTRACTOR is responsible for ensuring compliance with the Confidentiality Agreements.
- c. CONTRACTOR shall protect the confidentiality of all patient records as set forth in State and/or Federal laws on confidentiality of medical records.
- d. Unauthorized Disclosure. The recipient of any Confidential Information shall, upon discovery of any unauthorized use or disclosure of such Confidential Information by recipient, or any other breach of these confidentiality obligations by the recipient, fully cooperate with the disclosing party to assist the disclosing party regain possession of the Confidential Information and prevent the further unauthorized use or disclosure of the Confidential Information.
- e. Remedies. The Parties acknowledge and agree that in the event of a breach of Confidentiality, the non-breaching party may suffer irreparable injuries not compensable by money damages alone; and therefore, the non-breaching party will not have an adequate remedy at law. The non-breaching party shall be entitled to injunctive relief without the necessity of posting any bond or undertaking to prevent any further breach. Such remedy shall be in addition to any other remedy the non-breaching party may have.

10.2 CONTRACTOR's Interaction with the Media

CONTRACTOR shall refer all inquiries from the media to LAFD, shall, as soon as practical, contact LAFD to inform LAFD of the inquiry, and shall comply with the

procedures of LAFD's public affairs staff regarding statements to the media relating to this Agreement or CONTRACTOR's services hereunder.

10.3 Requirements Apply to All Subcontractors

The CONTRACTOR shall ensure that these requirements are provided to and apply to all Subcontractors of this Agreement.

10.4 Continued Requirements

The requirements of this Section survive termination of this Agreement.

11.0 INSURANCE

11.1 CONTRACTOR shall procure and maintain for the duration of this Agreement, the following insurance coverage:

- a. Workers' Compensation insurance in compliance with the applicable State and Federal laws, and not less than \$1,000,000;
- b. General Liability insurance in an amount no less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
- c. General Liability insurance in an amount no less than Coverage for business interruption, destruction of data processing equipment and media, liabilities affecting accounts receivable, and valuable documents in an amount no less than \$1,000,000 aggregate;
- d. Storage of Licensed Software code and data in a secure escrow account such that the LAFD would have access to it in the event that the CONTRACTOR ceases as a business entity and is unable to provide the services outlined in this Agreement. In that circumstance, the LAFD would have access to run the Licensed Software for a period of time not to exceed twelve (12) months while a new provider is contracted for field data collection system services.
- e. Liability coverage for all vehicles whether owned, hired or used in the amount of \$500,000; and

11.2 The policies are to contain, or be endorsed to contain, the following provisions:

a. General Liability and Automobile Liability Coverage

1. LAFD, its officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the CONTRACTOR, including the insured general supervision of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on

the scope of protections afforded LAFD, its officers, officials, employees or volunteers.

2. CONTRACTOR's insurance coverage shall be primary insurance as respects LAFD, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by LAFD, its officers, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it. CONTRACTOR hereby waives subrogation rights for loss or damage against LAFD.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to LAFD, its officers, officials, employees or volunteers.
4. CONTRACTOR's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Companies issuing the insurance policy, or policies, shall have no recourse against LAFD for payment of premiums or assessments for any deductibles with are all at the sole responsibility and risk of CONTRACTOR.

b. All Coverage

1. Each insurance policy required by this Section shall be endorsed to State that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to LAFD.
2. CONTRACTOR shall furnish LAFD with certificates of insurance and with original endorsements effecting coverage required by this Section if requested. The certificates and endorsements for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by LAFD before work commences. LAFD reserves the right to require complete, certified copies of all required insurance policies at any time.
3. Payment Withholding: Should any of CONTRACTOR or Subcontractor's required insurance lapse during the term of the Agreement, the CITY shall not process any requests for payments originating after such lapse until the CITY receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date.

12.0 STANDARD PROVISIONS

The CONTRACTOR must comply with the applicable requirements of the Standard Provisions for City Contracts (Rev. 03/09), except as noted in this Agreement, attached hereto as Exhibit A, and incorporated herein by reference. Should there be any

discrepancy between provisions in this Agreement and the Standard Provisions, those in this Agreement shall take precedence.

13.0 NON-DISCRIMINATION

Notwithstanding any other provision of any ordinance of the CITY to the contrary, every Agreement which is let, awarded or entered into with or on behalf of the CITY, shall contain by insertion therein a provision obligating the CONTRACTOR in the performance of such Agreement not to discriminate in his or her Employment Practices against any employee or applicant for employment because of the applicant's race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition. All CONTRACTORS who enter into such Agreements with the CITY shall include a like provision in all subcontracts awarded for work to be performed under the Agreement with the CITY. Failure of the CONTRACTOR to comply with this requirement or to obtain the compliance of its Subcontractors with such obligations shall subject the CONTRACTOR to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the CONTRACTOR's Agreement with the CITY. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.

14.0 EQUAL EMPLOYMENT PRACTICES

Every non-construction and construction Agreement with, or on behalf of, the CITY for which the consideration is \$1,000 or more shall contain the following provisions, which shall be designated as the EQUAL EMPLOYMENT PRACTICES provision of such Agreement:

- 14.1 During the performance of this Agreement, the CONTRACTOR agrees and represents that it will provide Equal Employment Practices and the CONTRACTOR and each Subcontractor hereunder will ensure that in his or her Employment Practices persons are employed and employees are treated equally and without regard to, or because of, race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
 - a. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - b. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - c. The CONTRACTOR agrees to post a copy of Paragraph A, hereof, in conspicuous places at its place of business available to employees and applicants for employment.
- 14.2 The CONTRACTOR will, in all solicitations or advertisements for employees placed by, or on behalf of, the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- 14.3 At the request of the Awarding Authority or the DAA, the CONTRACTOR shall certify in the specified format that he or she has not discriminated in the performance of CITY Agreements against any employee or applicant for employment on the basis or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- 14.4 The CONTRACTOR shall permit access to, and may be required to provide certified copies of, all of his or her records pertaining to employment and to employment practices by the awarding authority or the DAA for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY Agreements. Upon request, the CONTRACTOR shall provide evidence that he or she has or will comply therewith.
- 14.5 The failure of any CONTRACTOR to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of CITY Agreements. The failure shall only be established upon a finding to that effect by the Awarding Authority, on the basis of its own investigation or that of the DAA. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to the CONTRACTOR.
- 14.6 Upon a finding duly made that the CONTRACTOR has failed to comply with the Equal Employment Practices provisions of a CITY Agreement, the Agreement may be forthwith cancelled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to, and retained by, the CITY. In addition thereto, the failure to comply may be the basis for a determination by the Awarding Authority or the DAA that the said CONTRACTOR is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such a determination, the CONTRACTOR shall be disqualified from being awarded an Agreement with the CITY for a period of two years, or until the CONTRACTOR shall establish and carry out a program in conformance with the provisions hereof.
- 14.7 Notwithstanding any other provision of this Agreement, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- 14.8 The Board of Public Works shall promulgate rules and regulations through the DAA, and provide necessary forms and required language to the Awarding Authorities to be included in CITY Request for Bids or Request for Proposal packages or in supplier registration requirements for the implementation of the Equal Employment Practices provisions of this Agreement, and such rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive orders. No other rules, regulations or forms may be used by an Awarding Authority of the CITY to accomplish the contract compliance program.
- 14.9 Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.

- 14.10 By affixing its signature on an Agreement that is subject to this article, the CONTRACTOR shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Agreements.
- 14.11 Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with employment practices, including, but not limited to:
- a. hiring practices;
 - b. apprenticeships where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
 - c. training and promotional opportunities; and
 - d. reasonable accommodations for persons with disabilities.
- 14.12 All CONTRACTORS subject to the provisions of this section shall include a similar provision in all subcontracts awarded for work to be performed under the Agreement with the CITY, and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the Subcontractors as are applicable to the CONTRACTOR. Subcontracts shall follow the same thresholds specified in Section 10.8.1.1. Failure of the CONTRACTOR to comply with this requirement or to obtain the compliance of its Subcontractors with all such obligations shall subject the CONTRACTOR to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the CONTRACTOR's Agreement with the CITY.

15.0 AFFIRMATIVE ACTION PROGRAM

Every non-construction and construction Agreement with, or on behalf of, the CITY for which the consideration is \$25,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such Agreement:

- 15.1 During the performance of a CITY Agreement, the CONTRACTOR certifies and represents that the CONTRACTOR and each Subcontractor hereunder will adhere to an Affirmative Action Program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
- a. This section applies to work or services performed or materials manufactured or assembled in the United States.
 - b. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

- c. The CONTRACTOR shall post a copy of Paragraph A, hereof, in conspicuous places at its place of business available to employees and applicants for employment.
- 15.2 The CONTRACTOR shall, in all solicitations or advertisements for employees placed, by or on behalf of, the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
- 15.3 At the request of the Awarding Authority or the DAA, the CONTRACTOR shall certify on an electronic or hard copy form to be supplied, that the CONTRACTOR has not discriminated in the performance of CITY Agreements against any employee or applicant for employment on the basis or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
- 15.4 The CONTRACTOR shall permit access to, and may be required to provide certified copies of, all of its records pertaining to employment and to its employment practices by the Awarding Authority or the DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY Agreements and, upon request, to provide evidence that it has or will comply therewith.
- 15.5 The failure of any CONTRACTOR to comply with the Affirmative Action Program provisions of CITY Agreements may be deemed to be a material breach of a CITY Agreement. The failure shall only be established upon a finding to that effect by the Awarding Authority, on the basis of its own investigation or that of the DAA. No finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the CONTRACTOR.
- 15.6 Upon a finding duly made that the CONTRACTOR has breached the Affirmative Action Program provisions of a CITY Agreement, the Agreement may be forthwith cancelled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the CONTRACTOR is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the CONTRACTOR shall be disqualified from being awarded an Agreement with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- 15.7 In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the CITY, or any court of competent jurisdiction, that the CONTRACTOR has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY Agreement, there may be deducted from the amount payable to the CONTRACTOR by the CITY under the Agreement, a penalty of ten dollars for each person for each calendar day on which the person was discriminated against in violation of the provisions of a CITY Agreement.

- 15.8 Notwithstanding any other provisions of a CITY Agreement, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- 15.9 The Public Works Board of Commissioners shall promulgate rules and regulations through the DAA and provide to the Awarding Authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of CITY Agreements, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an Awarding Authority of the CITY to accomplish this Agreement compliance program.
- 15.10 Nothing contained in CITY Agreements shall be construed in any manner so as to require or permit any act which is prohibited by law.
- 15.11 By affixing its signature to an Agreement that is subject to this article, the CONTRACTOR shall agree to adhere to the provisions in this article for the duration of the Agreement. The Awarding Authority may also require CONTRACTORS and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Program.
- a. The CONTRACTOR certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the CONTRACTOR's field of work. The CONTRACTOR shall:
1. Recruit and make efforts to obtain employees through:
 - i. Advertising employment opportunities in minority and other community news media or other publications.
 - ii. Notifying minority, women and other community organizations of employment opportunities.
 - iii. Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.
 - iv. Encouraging existing employees, including minorities and women, to refer their friends and relatives.
 - v. Promoting after school and vacation employment opportunities for minority, women and other youth.
 - vi. Validating all job specifications, selection requirements, tests, etc.
 - vii. Maintaining a file of the names and addresses of each worker referred to the CONTRACTOR and what action was taken concerning the worker.

- viii. Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the CONTRACTOR has a collective bargaining agreement, has failed to refer a minority, woman or other worker.
- 2. Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.
- 3. Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.
- 4. Secure cooperation or compliance from the labor referral agency to the CONTRACTOR's contractual Affirmative Action Program obligations.
- 5. Establish a person at the management level of the CONTRACTOR to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the CONTRACTOR's Equal Employment and Affirmative Action Program policies.
- 6. Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to CITY, State and Federal authorities upon request. 9
- 7. Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Agreements. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the CONTRACTOR may become involved in fulfilling any of its Agreements.
- 8. Document its good faith efforts to correct any deficiencies when problems are experienced by the CONTRACTOR in complying with its obligations pursuant to this article. The CONTRACTOR shall state:
 - i. What steps were taken, how and on what date.
 - ii. To whom those efforts were directed.
 - iii. The responses received, from whom and when.
 - iv. What other steps were taken or will be taken to comply and when.
 - v. Why the CONTRACTOR has been or will be unable to comply.
- b. Every Agreement of \$25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall

also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

15.12 The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Awarding Authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

- a. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
- b. Classroom preparation for the job when not apprenticeable;
- c. Pre-apprenticeship education and preparation;
- d. Upgrading training and opportunities;
- e. Encouraging the use of CONTRACTORS, Subcontractors and suppliers of all racial and ethnic groups; provided, however, that any Agreement subject to this ordinance shall require the CONTRACTOR, Subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the CONTRACTOR's, Subcontractor's or supplier's geographical area for such work;
- f. The entry of qualified women, minority and all other journeymen into the industry; and
- g. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

15.13 Any adjustments which may be made in the CONTRACTOR's work force to achieve the requirements of the CITY's Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

15.14 This ordinance shall not confer upon the CITY or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by CONTRACTORS engaged in the performance of CITY Agreements.

15.15 All CONTRACTORS subject to the provisions of this article shall include a similar provision in all subcontracts awarded for work to be performed under the Agreement with the CITY and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the Subcontractors as are applicable to the CONTRACTOR. Failure of the CONTRACTOR to comply with this requirement or to obtain the compliance of its Subcontractors with all such obligations shall subject the CONTRACTOR to the imposition of any and all

sanctions allowed by law, including, but not limited to, termination of the CONTRACTOR's Agreement with the CITY.

16.0 FIRST SOURCE HIRING ORDINANCE

Unless otherwise exempt in accordance with the provisions of this Ordinance, this contract is subject to the applicable provisions of the First Source Hiring Ordinance (FSHO), Section 10.44 et seq. of the Los Angeles Administrative Code, as amended from time to time.

- 16.1 CONTRACTOR/CONSULTANT shall, prior to the execution of the contract, provide to the DAA a list of anticipated employment opportunities that CONTRACTOR/ CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
- 16.2 CONTRACTOR/CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONTRACTOR/CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONTRACTOR/CONSULTANT interviewed and the reasons why referred individuals were not hired.
- 16.3 Any Subcontract entered into by the CONTRACTOR/CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
- 16.4 CONTRACTOR/CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONTRACTOR/CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONTRACTOR/CONSULTANT has violated provisions of the FSHO.

17.0 CALIFORNIA IRAN CONTRACTING

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC §2201(q)). The Iran Contracting Act prohibits bidders engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A bidder who “engages in investment activities in Iran” is defined as either:

- 17.1 A bidder providing goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- 17.2 A bidder that is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2203(b) as a person engaging in the investment activities in Iran.

The bidder shall certify that at the time of submitting a bid for new contract or renewal of an existing contract, the bidder is not identified on the DGS list of ineligible businesses or persons and that the bidder is not engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts (PCC § 2205).

To comply with the Iran Contracting Act of 2010, the bidder shall provide its vendor or financial institution name, and City Business Tax Registration Certificate (BRTC) if available, in completing ONE of the options shown in Exhibit D.

18.0 CHARTER SECTION 470

18.1 CEC FORM 50

Certain contractors agree to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if those contractors qualify as a lobbying entity under Los Angeles Municipal Code §48.02. CEC Form 50 attached. Agreements submitted without a completed CEC Form 50, by proposers that qualify as a lobbying entity under Los Angeles Municipal Code §48.02 shall be deemed nonresponsive.

Campaign Contributions – Per City Charter Sections 470(c) (12) the CONTRACTOR is subject to Charter section 470(c) (12) and related ordinances. As a result, the CONTRACTOR may not make campaign contributions to and/ or engage in fundraising for certain elected City officials or candidates during the proposal process or for 12 months after the contract is signed. The CONTRACTOR'S principals and subcontractors performing \$100,000.00 or more in work on the contract, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

18.2 CEC FORM 55

CEC Form 55 requires the CONTRACTOR to identify with their principals, their subcontractors performing \$100,000 or more in work on the Agreement, and the principals of those subcontractors. The CONTRACTOR must also notify their principals and subcontractors in writing of the restrictions and include the notice in Agreements with subcontractors. CEC Form 55 is attached. Agreements submitted without a completed CEC Form 55 shall be considered nonresponsive. Bidders who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or ethics.lacity.org

19.0 TABLE OF EXHIBITS

The Exhibits listed below are incorporated into this Agreement by this reference.

Exhibit A - Standard Provisions for City Contracts rev 03/09
Exhibit B - Reports (as Executed on 9/24/2010)
Exhibit C - Fee Schedule (revised 10/05/2016)
Exhibit D - Business Associate Agreement (effective 01/25/2013)
Exhibit E - Confidentiality Agreement (revised 04/28/2016)
Exhibit F - Staff Assignment Table (revised 12/29/2015)
Exhibit G - Source Code Escrow Agreement (as Executed on 9/24/2010)

[Signature page follows]

IN WITNESS THEREOF, the parties hereto have caused this First (1st) Amendment to Agreement C-118005 to be executed by their duly authorized representatives:

THE CITY OF LOS ANGELES

By _____
RALPH M. TERRAZAS
Fire Chief

Date _____

PHYSIO-CONTROL, INC.,

By _____

Date _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

ATTEST:

HOLLY L. WOLCOTT

By _____
Laurel L. Lightner
Assistant City Attorney

By _____
Deputy City Clerk

Date _____

Date _____

Hardware Lease - GETAC RX-10

Original Agreement Amount	\$	9,961,959.20
Option 1 Amount	\$	4,896,884.41
Amended Ceiling Amount		14,858,843.61

2) Sales Tax calculation for Hardware only (devices and accessories) as a cumulative amount divided by the number of periods $\$2.062.014,55 \times 9\% = \$185.581,31 / 36 = \$5.155,04$.

3) PCDS Consultants [1.5] per Section 9.2 and Exhibit F of the restated agreement as amended.

47 Fire solution will be provided at 100% discount through the first twenty-four (24) months and will only be charged if implemented thereafter. Fire may be cancelled at any time after implementation.

5) Hardware/Accessories will be ordered per unit prices in Attachment A. Order requirements include \$5,000 min/in/unit per order, limited to four (4) orders per year. Billed as received. The initial order includes 955 LIND power adapters.

6) Additional Consultant for rollout requirements include 30 day advance notice of need for sendees. These services are placed in months 76, 77, and 78 for estimating purposes only and can be consumed as directed by LAFD over the term of the Agreement, as needed. Weekly services can be provided by taking the monthly rate divided by 4.3. Contract cap is \$53,700. Billed as received. Consultant costs in directed by LAFD over the term of the Agreement, as needed. Weekly services can be provided by tak accordance with Section 9.2 and Exhibit F - Physio-Control Staff Assignment Table of this Agreement

7) Finance *charger*, are calculated as a fixed cost over time instead of *cm* amortized amount in' payment period. (\$179,705.45/36=54,991.82)

Exhibit C: Attachment A: Pricing Schedule
Hardware Detail (Estimate as of 9/20/16)

EQUIPMENT LEASE CHARGES	PART #	UNIT COST	QTY ORDERED	EXTENDED UNIT COST
GETAC RX10 : R Series, Core M-5Y71, Webcam, Win10x64+8GB, 128GB SSD, SR (LCD+Touch), US Power Cord, 8M Rear Camera, Wifi+BT+GPS+Gobi+Passthrough, High Capacity Battery+Smart Card Exp., Barcode Reader, Stylus and Tether, Pooled B2B 3 Yr Warranty 1)				
Shoulder strap - 2-point	GMS2X2	\$ 3,381.00	545 \$	1,842,645.00
SCREEN PROTECTION FILM WARRANTY INSTALL (YEAR 1-3)	SPFW1-3YR	\$ 39.99	545 \$	21,794.55
Win 10 VLK (OS includes BitLocker Drive Encryption)		\$ 190.00	545 \$	103,550.00
Fortres Grand MDM - Year 1		\$ 1.00	545 \$	545.00
Fortres Grand MDM - Year 2		\$ 48.00	545 \$	26,160.00
Fortres Grand MDM - Year 3		\$ 48.00	545 \$	26,160.00
Subtotal Lease Equipment		\$ 3,755.99	545 \$	2,047,014.55
GETAC: Device Imaging Service		\$ 125.00	0 \$	-
GETAC: Device Base Image		\$ 15,000.00	1 \$	15,000.00
Sub-Total Device Imaging			\$	15,000.00
Sub-Total Equipment & Imaging		\$ 57,278.18	36 \$	2,062,014.55
Sales Tax (LA County = 9.00%)		\$ 5,155.04	36 \$	185,581.31
Finance Charges @ 5.5%		\$ 4,991.82	36 \$	179,705.45
TOTAL EQUIPMENT LEASE CHARGES			\$	2,427,301.31
REQUIRED POWER ACCESSORIES FOR LAFD APPARATUS	PART #	UNIT COST	QTY ORDERED	EXTENDED UNIT COST
11-16VIN FOR GETAC F110, 8300 T800 W/96" OUTPUT (INITIAL ROLLOUT)	GE-LIND-LAFD-I	\$ 61.37	955 \$	58,608.35
CA Sales Tax @ 9.0%		\$ 5.52	955 \$	5,274.75
TOTAL REQUIRED ACCESSORIES (BILLED SEPARATELY)		\$ 66.89	955 \$	63,883.10
OPTIONAL ACCESSORIES AVAILABLE AT SEPARATE PER UNIT COST	PART #	UNIT COST	TAX AMOUNT	EXTENDED UNIT COST
Fire Forms Software (Months 73 to 96)		\$ -	n/a \$	-
Fire Forms Software (Months 97 to 108)		\$ 8,200.00	n/a \$	8,200.00
Add'l Staff Support/Consultant during Mobile Touch roll-out (Months 76 to 78, or as required by LAFD)		\$ 17,900.00	n/a \$	17,900.00
Shoulder strap - 2-point	GMS2X2	\$ 39.99	\$ 3.60	\$ 43.59
Optional Kick Stand (Spare, Need to Buy Extreme/Extreme LTE SKU (SKUID V,W in the 11th digit)	GOKSX1	\$ 69.99	\$ 6.30	\$ 76.29
Detachable Keyboard (Spare, Need to Buy GOKSX1 or GOKSX1)	GDKBU3	\$ 379.00	\$ 34.11	\$ 413.11
RX10 Capacitive Stylus & Tether	GMPSXC	\$ 29.99	\$ 2.70	\$ 32.69
11-16VIN FOR GETAC F110, B300 T800 W/ 96" OUTPUT	GE-LIND-LAFD	\$ 149.99	\$ 13.50	\$ 163.49
RX10 High Capacity Battery (Spare) { Is available ONLY if RX10				
Extreme/Extreme LTE SKU is purchased first. Unit SKU ID V or W at the 11th digit)	GBM8X1	\$ 159.00	\$ 14.31	\$ 173.31
Gamber Johnson Vehicle Mount	GDVMGC	\$ 299.00	\$ 26.91	\$ 325.91
Spare AC Adapter & power cord	GAA6U1	\$ 79.99	\$ 7.20	\$ 87.19
RX10 Main Battery (spare)	GBM4XB	\$ 129.00	\$ 11.61	\$ 140.61
Multi-Bay Battery Charger - Eight Bays	GCECUC	\$ 1,299.00	\$ 116.91	\$ 1,415.91
External Dual Bay Main Battery Charger	GCMCUC	\$ 399.99	\$ 36.00	\$ 435.99
Office Dock with US AC Adapter	GDOFUC	\$ 399.99	\$ 36.00	\$ 435.99
Note: Optional items require written confirmation from the LAFD that said services are needed and optional items shall be held to the limit under the term of this agreement of \$152,100.00.				
TOTAL INITIAL COSTS			\$	2,491,184.41
CEILING FOR ACCESSORIES & OPTIONAL SERVICES (NOT TO EXCEED)			\$	152,100.00
CONTRACT CEILING AMOUNT FOR 9/23/16 THROUGH 9/22/19			\$	2,643,284.41

Exhibit C
Attachment B: MobileTouch Implementation Milestones

Date	Phase	Milestone	ePCR Software Discount ¹⁾
TBD	Contract Renewal Signed (Date Of Execution, "DOE")		
DOE+3	Order Devices - Getac RX10	Three (3) business days after execution of Contract Renewal	
DOE+33	Ship - Getac RX10	Thirty (30) business days after Order of Devices	
12/01/16	MobileTouch Pilot Begins	Test export of DHS files, intermedix, and NFIRS files	10%
		Admin users ability to view/edit/delete MobileTouch ePCR's	10%
		Import CAD data into ePCR	10%
		1 ePCR per patient	10%
12/16/16	MobileTouch Pilot Ends		
01/17/17	MobileTouch Training Begins	Deliver Getac device base image (1/2/17)	10%
		Ability to turn MobileTouch business rules / mandatory fields off and on from HealthEMS Manager	10%
		Add Treatment Types and fields (previous flex fields)	10%
		Ability to attach ECG's online or offline	10%
04/01/17	MobileTouch Implemented Department-wide	Ability to attach pictures	10%
		MCI triage function	10%
Potential Discount			100%

¹⁾ If the milestone is not achieved, the ePCR software will be discounted the percentage indicated in the chart above the following month and every month thereafter that the milestone is not met.