

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is made as of the first day of July 2020, between the City of Burbank, a municipal corporation ("City"), and Steven J. Rottman, for Dr. Rottman to act as the Director of Emergency Medical Services ("Director"). The City and Director agree as follows:

ARTICLE I

SCOPE OF AGREEMENT

1.1 Purpose of Agreement. The purpose of this Agreement is to retain the services of Dr. Rottman to act through the Burbank Fire Department as Director of Emergency Medical Services ("Director"). The fulfillment of this Agreement is in the vital and best interests of the City and the health, safety, morals and general welfare of its residents.

1.2 Scope of Services. The City desires to retain the services of Dr. Rottman to act as the Director of Emergency Medical Services the scope of which services is more particularly described in Exhibit "A", attached hereto. Director agrees to the terms of Exhibit B (Provisions Relating to Protected Health Information), attached hereto.

Director shall provide his best skill and judgment and such expertise and services as are required to perform the scope of services. Director accepts the relationship of trust and confidence established between it and the City by this Agreement. Director agrees to furnish efficient business administration and to use his best efforts to complete the services set forth in this Agreement in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the City.

1.3 Extent of Agreement. This Agreement represents the entire agreement between the City and Director and supersedes all prior negotiations, representations or agreements. This Agreement may be amended only by written instrument signed by both the City and Director.

ARTICLE II

COMPENSATION

2.1 Compensation for Scope of Services. In consideration of the performance of this Agreement, the City agrees to pay Director, as compensation for its services, a fee not to exceed the sum of \$32,100.00, payable at a rate of \$168.00 per hour.

ARTICLE III

PAYMENTS TO DIRECTOR

Director shall submit monthly to the Chief of the Fire Department, a statement showing the amount of Director's fee for services performed. Payment by the City to Director of the statement amount shall be made within thirty (30) days after it is submitted. If the City should fail to pay Director within seven (7) days after the time payment of any amount becomes due, then Director may, upon seven (7) additional days' written notice to the City, stop work until payment of the amount owing has been received.

ARTICLE IV

TERM OF AGREEMENT

This Agreement shall be in effect from July 1, 2020, until June 30, 2021, unless sooner terminated. If any work is performed by the Director at the request of the City after June 30, 2021, Director shall be compensated at the hourly rate of \$168.00.

ARTICLE V

TERMINATION OF AGREEMENT

Except as provided by Article IV, this Agreement may be terminated, with or without cause, at any time by either party hereto after giving sixty (60) days' written notice to the other.

ARTICLE VI

UNCONTROLLABLE FORCES

The City and Director shall exert all efforts to perform the tasks set forth herein within the proposed schedules. However, neither the City nor Director shall be held responsible for inability to perform under this Agreement if such inability is unforeseeable. Neither party shall be held responsible for delay from any causes beyond its control, including but not limited to the following: strikes, riots, civil disturbances, fire, insurrection, war, the elements, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God, or the public enemy.

ARTICLE VII

INDEMNIFICATION

In the course of the performance of this Agreement, Director shall take all reasonable precautions to prevent the occurrence of any injury, including death, to any

person or any damages to any property arising out of any acts or omissions of Director, its agents, employees, or subcontractors.

The City shall indemnify and hold Director harmless from and against any suits, liabilities, losses, damages, claims, causes of action and expenses, including attorneys' fees, arising out of or connected with Director's simple negligence or that of its agents, employees and subcontractors.

The City shall further defend, indemnify and hold Director harmless from and against any civil, criminal and administrative enforcement actions, fines, and/or penalties of any nature relating to the Director's DEA-licensed activities including the ordering, procuring, storing, and/or distribution of narcotics, including but not limited to controlled substances and pharmaceutical supplies, which arise from, are connected to or are the result of any acts or omissions of the City, its agents, employees, and/or subcontractors.

The City shall not indemnify or hold Director harmless from and against any suits, liabilities, losses, damages, claims, causes of action and expenses, including attorneys' fees, arising out of or connected with Director's gross negligence or willful misconduct or that of its agents, employees, and subcontractors.

For the purpose of this Agreement, officers and employees of the City of Burbank, including but not limited to fire fighters and paramedics are not agents, employees, and subcontractors of the Director.

ARTICLE VIII

WAIVER OF TERMS AND CONDITIONS

Failure of the City or Director to insist upon performance of any of the terms and conditions of this Agreement, or to exercise any right or privilege contained in this Agreement, or the waiver of any breach of the terms and conditions of this Agreement shall not be considered as thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no waiver has occurred.

ARTICLE IX

SEVERABILITY

If any part, term or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected thereby.

ARTICLE X

GOVERNING LAW

The terms and conditions of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of Los Angeles County.

ARTICLE XI

NOTICES

Any notice required by this Agreement to be given in writing shall be given by Director to:

City Clerk
City of Burbank
275 E. Olive Avenue
Burbank, CA 91502

with a copy to:

Chief of the Fire Department
311 E. Orange Grove Avenue
Burbank, CA 91502

with a copy to:

Office of the City Attorney
City of Burbank
275 E. Olive Avenue
Burbank, CA 91502

and by City to:

Steven J. Rottman, M.D.
10540 Putney Road
Los Angeles, CA 90064

Either party may change the address at which it is to receive notices by so advising the other party in writing.

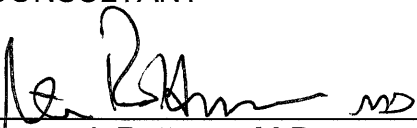
ARTICLE XII

ASSIGNMENT

This Agreement is personal to the Director. Any attempted assignment by the Director shall be void unless approved in writing by the Chief of the Fire Department. Director's services pursuant to this Agreement shall be provided by Dr. Steven J. Rottman or directly under the supervision of Dr. Steven J. Rottman, and Director shall not assign another to supervise Director's performance of this Agreement without the prior written approval of the Chief of the Fire Department. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and any subsequent successors and assigns.

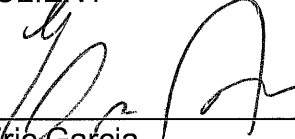
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first indicated above.

"CONSULTANT"



Steven J. Rottman, M.D.
Director of Emergency Medical Services

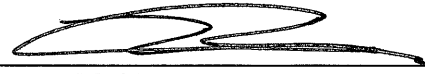
"CLIENT"



Eric Garcia
Fire Chief

ATTEST:
Office of the City Clerk

Approved as to Form
Office of the City Attorney

By: 

Zizette Mullins, MMC
City Clerk

By: 

Iain MacMillan
Assistant City Attorney

Exhibit A

Scope of Services

- A. All services are to be provided under the control and subject to the approval of the Chief of the Fire Department.
- B. Director is to develop and maintain a positive and effective working relationship with the Fire Department Nurse Educator and shall monitor the medical training programs, including the content and program delivery, and analyze and report upon its effectiveness in the community.
- C. Director is to supervise and evaluate the EMS Quality Improvement and Assurance program of Fire Department EMT-P and EMT-B personnel, and any specific pilot programs identified and designated by Los Angeles County.
- D. Director is to provide liaison between the Burbank Fire Department and the emergency medical community including local hospitals, the Los Angeles County Health Department, and other EMS agencies and colleagues.
- E. Director is to provide supervision in the procurement of pharmacological agents and controlled substances/devices.
- F. Director is to provide additional advisory services to the Chief of the Fire Department on matters of medical services as required. Such additional services may include, but are not limited to, advice on physical fitness programs for firefighters, reviewing injuries, and accidents to safety order and procedures.
- G. Director to provide such records and reports to the Chief of the Fire Department as will permit an effective and comparable evaluation of the programs described above.
- H. Director is to supervise and evaluate the EMT-D program.
- I. Director shall provide professional advice and assistance to the Fire Department relating to its oversight responsibilities for the Automatic External Defibrillators ("AED") installed in various public locations and city facilities. This assistance shall include oversight and direction regarding the development and implementation of an Internal Emergency Response System as required by state law in conjunction with the installation of the AED's. Director shall also assist in ensuring compliance with the state regulations and requirements for the AED's including among others, those for training, notification and maintenance.

EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT

1. **Scope.** As of the Effective Date, this Agreement applies to all present and future agreements between Covered Entity and Business Associate, pursuant to which Business Associate receives from or creates, receives, maintains or transmits on behalf of, Covered Entity, Protected Health Information (each agreement, an "Applicable Agreement" and collectively, the "Applicable Agreements"). As of the Effective Date, this Agreement, in addition to standing on its own, automatically extends to and amends all Applicable Agreements in effect on the Effective Date. This Agreement automatically shall be incorporated into all Applicable Agreements entered into by and between Covered Entity and Business Associate after the Effective Date.
2. **Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
3. **Obligations and Activities of Business Associate.** Business Associate agrees to:
 - (a) Not use or disclose PHI other than as permitted or required by the Agreement or as required by law;
 - (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
 - (c) Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware;
 - (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
 - (e) Make available PHI in a designated record set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

- (f) Make any amendment(s) to PHI in a designated record set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
- (h) To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

4. Permitted Uses and Disclosures by Business Associate.

- (a) Business Associate may only use or disclose PHI only as permitted or required by this Agreement or as required by law.
- (b) Business Associate may use or disclose PHI as required by law.
- (c) Business Associate agrees to make uses and disclosures and requests PHI consistent with Covered Entity's minimum necessary policies and procedures.
- (d) Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below.
- (e) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- (f) Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- (g) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

5. Obligations of Covered Entity.

- (a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (c) Covered entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

6. Reporting to Covered Entity.

- (a) Business Associate shall promptly notify Covered Entity of a Breach of Unsecured Protected Health Information. Business Associate's notification to Covered Entity hereunder shall: (i) be made to Covered Entity as soon as reasonably practical after discovery of the Breach, but no later than thirty (30) days after discovery; and (ii) include the following: date of the Breach; the date of discovery of the Breach; the nature and extent of the Unsecured Protected Health Information that was involved (including the types of any identifiers in the information); the identity of the individuals whose Unsecured Protected Health Information has been, or is reasonably believed to have been, the subject of a Breach; the unauthorized person who used the Unsecured Protected Health Information or to whom the disclosure was made; whether the Unsecured Protected Health Information was actually acquired or viewed; the extent to which the risk to the Unsecured Protected Health Information has been mitigated (such as provided by an existing confidentiality agreement with the recipient); and any other information necessary to complete a risk assessment to determine the probability that the Unsecured Protected Health Information has been compromised.
- (b) Covered Entity will be responsible to provide notification to individuals whose Unsecured Protected Health Information has been disclosed, as well as the Secretary and the media, as required by Section 13402 of the HITECH Act. Business Associate agrees to pay actual costs for notification and of any associated mitigation incurred by Covered Entity, such as credit

monitoring, if Covered Entity determines that the Breach warrants such measures. Business Associate agrees to establish procedures to investigate the Breach, mitigate losses, and protect against any future Breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.

7. Term and Termination.

- (a) **Term.** The Term of this Agreement shall be effective as of the date Business Associate first performs services on behalf of Covered Entity, or if later, the date the Privacy Rule applies to Covered Entity, and shall terminate on (i) the date Business Associate ceased to provide any services on behalf of Covered Entity; (ii) the date all PHI, provided by Covered Entity to Business Associate, or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, is returned to Covered Entity or destroyed by Business Associate; or (iii) the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- (b) **Termination for Cause.** Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within a reasonable time, in no event to exceed 10 days.
- (c) **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI.
- (d) **Survival.** The obligations of Business Associate under this Section shall survive the termination of this Agreement.

8. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

9. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the Privacy Rule and any other applicable law.

10. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the Privacy Rule.

- 11. No Third-Party Rights.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and respective successors or assigns, agents, representatives and subcontractors of the parties, any rights, remedies, obligations or liabilities whatsoever.
- 12. Governing Law.** If any dispute arises under this Agreement, it shall be construed in accordance with California law, to the extent that federal law is not applicable thereto.
- 13. Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the subject matter set forth herein and supersedes all prior agreements, arrangements and communications, whether oral or written, pertaining to the subject matter hereof.
- 14. Agency.** Notwithstanding anything herein to the contrary, Business Associate is an independent contractor providing services to Covered Entity and shall not be an agent of Covered Entity.
- 15. Indemnification.** Each party hereby agrees to indemnify and hold the other party, and such other party's affiliates, officers, directors, employees and agents, harmless from and against any and all liability and costs, including reasonable attorneys' fees, arising from any non-permitted or violating use or disclosure of Protected Health Information or breach of this Agreement by such party, its agents or subcontractors. In no event shall either party be liable for indirect or consequential damage