

LICENSE AGREEMENT

This License Agreement ("AGREEMENT") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and FALCK MOBILE HEALTH CORP., a California corporation ("LICENSEE"), to be effective on _____, 2021, when executed by the parties and approved by the San Diego City Attorney.

RECITALS

WHEREAS, CITY and LICENSEE entered into that certain Contract Resulting from Request for Proposal Number RFP No. 10089666-21-K dated November 27, 2021, whereby LICENSEE shall provide to CITY emergency ambulance services, 9-1-1 response, advanced life support transport services, and standby services ("SERVICES AGREEMENT");

WHEREAS, CITY owns that certain real property located at 3870 Kearny Villa Road, San Diego, California 92123 (the "PROPERTY"); and

WHEREAS, in connection with LICENSEE's services provided to CITY pursuant to the SERVICES AGREEMENT, CITY desires to grant LICENSEE the non-exclusive right to enter onto a portion of the PROPERTY (the "PREMISES"), as depicted in Exhibit A, attached hereto, for the LICENSE USE, as defined in this AGREEMENT, and as based upon the following terms and conditions:

I. DEFINITIONS

- 1.1. **LICENSE USE:** The non-exclusive use of the PREMISES for LICENSEE to perform repairs to LICENSEE's ambulances in connection with LICENSEE's services provided to CITY pursuant to the SERVICES AGREEMENT.
- 1.2. **PREMISES:** A portion of the PROPERTY, as depicted in Exhibit A, attached hereto.

II. AGREEMENT

- 2.1. **License.** Subject to the terms and conditions of this AGREEMENT, CITY grants permission to LICENSEE to enter upon the PREMISES solely for the purpose of the LICENSE USE. LICENSEE shall be responsible for all of LICENSEE's agents, employees, independent contractors, invitees, trainees, and volunteers and ensure that they adhere to all conditions stated in this AGREEMENT.
- 2.2. **Term.** The term of this AGREEMENT shall be month-to-month, commencing on December 7, 2021, and continuing on a month-to-month basis thereafter ("Term").
- 2.3. **Monthly License Fee.** The monthly license fee shall be \$3,500 (the "LICENSE FEE"), due on the first of each month during the Term.

- 2.4. Place of Payment. All payments to be paid by LICENSEE as a part of this AGREEMENT shall be payable to "City Treasurer" and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LICENSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

- 2.5. Default and Delinquent Payments. If LICENSEE fails to make any payment under this AGREEMENT when due, LICENSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be included in the additional LICENSE FEE for that pay period. If any amount of such payment remains unpaid after fifteen (15) days past due, LICENSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be included in the additional LICENSE FEE for that pay period. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than twenty-five dollars (\$25). After thirty (30) days past due, unpaid amounts due to CITY under this AGREEMENT may be referred to the San Diego City Treasurer for collection and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LICENSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LICENSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LICENSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.
- 2.6. Maintenance. As it relates to LICENSEE's actual use and activities, LICENSEE shall, at LICENSEE's sole cost and expense and to CITY'S satisfaction, maintain the PREMISES in good order and repair, and in a safe, healthy, and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the LICENSE USE. CITY shall at no time during the Term be required to make any improvements or repairs to the PREMISES. LICENSEE shall keep the PREMISES free and clear of rubbish, debris and litter caused by the LICENSE USE.

- 2.7. CITY's Consent/Approval. Whenever required under this AGREEMENT, CITY's consent or approval means the written consent or approval of the Mayor of the City of San Diego, or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.
- 2.8. Use of PREMISES. LICENSEE may use the PREMISES solely for the LICENSE USE and for no other purpose whatsoever, without CITY'S prior written consent in each instance. CITY is granting LICENSEE a non-exclusive right of entry to enter the PREMISES and make limited use of the PREMISES, based on the terms and conditions of this AGREEMENT. LICENSEE shall park ambulances and privately owned vehicles solely in specified locations on the PREMISES, as depicted in Exhibit A. LICENSEE shall not block ingress to or egress from the Logistics facility via the north gate on the PROPERTY, as depicted in Exhibit A. No provisions of this AGREEMENT shall be construed to either create a landlord/tenant or agency relationship between CITY and LICENSEE or create any form of an estate or limited estate in favor of LICENSEE. CITY reserves the right to enter upon the PREMISES at all times and to inspect and maintain the PREMISES as CITY deems necessary so long as LICENSEE'S conduct of business is not interrupted.
- 2.9. CITY Removal of LICENSEE Staff from PROPERTY. CITY may require LICENSEE to remove from the PROPERTY any agent, employee, invitee, trainee, or volunteer of LICENSEE in the event in the event that CITY determines, in its sole discretion, that the agent, employee, invitee, trainee, or volunteer's presence at the PROPERTY is disruptive, interferes with CITY's ability to provide fire and emergency medical services, or is not otherwise in compliance with the terms and conditions of this AGREEMENT.
- 2.10. Revocable License. This AGREEMENT is not a lease. This AGREEMENT is a license to use the PREMISES, and may be revoked at will by CITY, in its sole discretion: (a) immediately upon written notice delivered to LICENSEE if LICENSEE breaches any of LICENSEE's obligations under this AGREEMENT, or in case of an emergency; or (b) upon reasonable prior written notice, but not less than thirty (30) days, delivered to LICENSEE if for CITY's convenience. CITY shall not be obligated to pay, reimburse, or otherwise compensate LICENSEE for any burden or loss, financial or otherwise, which LICENSEE may incur as a result of such revocation or termination of this AGREEMENT. LICENSEE expressly waives any claim for expense or loss which LICENSEE might incur as a result of CITY'S revocation or termination of this AGREEMENT.
- 2.11. Assignment and Sublicense. LICENSEE shall not assign or sublicense any rights granted by this AGREEMENT or any interest in this AGREEMENT without CITY's prior written consent. Approval of any such proposed assignment or sublicense may be withheld in the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this AGREEMENT.

- 2.12. Compliance with Law. LICENSEE shall, at its sole cost and expense, at all times during its occupancy, use, and maintenance of the PREMISES, comply with all rules, regulations, laws and ordinances, and all direction by competent authority, which now or hereafter pertain to LICENSEE's occupancy, use, and maintenance of the PREMISES.
- 2.13. Compliance with CITY Rules and Regulations. LICENSEE shall, at its sole cost and expense, at all times during its occupancy, use and maintenance of the PREMISES comply with CITY and CITY's Fire Department rules and regulations, which now or hereafter pertain to LICENSEE's occupancy, use, and maintenance of the PREMISES, including, but not limited to, City of San Diego Administrative Regulation No. 94.95, which is attached hereto as Exhibit B.
- 2.14. Drug-Free Workplace. LICENSEE agrees to comply with the CITY's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952, and incorporated into this AGREEMENT by this reference.
- 2.15. Local Business and Employment. LICENSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LICENSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this AGREEMENT from local residents and firms as opportunities occur. LICENSEE agrees to hire qualified local residents and firms whenever feasible.
- 2.16. Improvements/Alterations. LICENSEE shall not construct any improvements, structures, or installations on the PREMISES, and shall not alter the PREMISES in any way without the prior written consent of CITY in each instance, which may be granted or withheld in CITY's sole and absolute discretion. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to PREMISES.
- 2.17. Signs. LICENSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the PREMISES without CITY's prior written consent, which may be granted or withheld in CITY's sole and absolute discretion. If any such unauthorized item is found on the PREMISES, LICENSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at LICENSEE's cost.
- 2.18. Entry and Inspection. CITY reserves the right to enter and inspect the PREMISES at any time, without notice, so long as a LICENSEE's conduct of business is not interrupted.
- 2.19. Insurance. LICENSEE shall not enter or come onto the PROPERTY, nor begin any use of the PREMISES under this AGREEMENT until it has done all of the following: (a) obtained, and provided to the CITY, insurance certificates reflecting evidence of all insurance required below, however, the CITY reserves the right to request, and the LICENSEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that

all policies contain the specific provisions required below. LICENSEE's liabilities, including but not limited to LICENSEE's indemnity obligations, under this AGREEMENT, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this AGREEMENT and LICENSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this AGREEMENT may be treated as a material breach of contract by the CITY. LICENSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this AGREEMENT.

2.19.1. Types of Insurance. At all times during the term of this AGREEMENT, LICENSEE shall maintain insurance coverage as follows:

- a. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- b. Commercial Automobile Liability. For all of LICENSEE's automobiles including owned, hired, and non-owned automobiles, LICENSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
- c. Causes of Loss-Special Form Property Insurance. LICENSEE shall obtain and maintain, at its sole cost, Causes of Loss-Special Form Property Insurance on all of LICENSEE's insurable property related to the LICENSEE USE of the PREMISES under this AGREEMENT or the PREMISES in an amount to cover 100 percent (100%) of the replacement cost. LICENSEE shall deliver a certificate of such insurance to the CITY's Department of Real Estate and Airport Management.
- d. Workers' Compensation. For all of LICENSEE's employees who are subject to this AGREEMENT and to the extent required by the applicable state or federal law, LICENSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and LICENSEE shall provide an endorsement

that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives.

- 2.19.2 Deductibles. All deductibles on any policy shall be the responsibility of LICENSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.
- 2.19.3. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this AGREEMENT shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers on if the carrier is authorized to do business in the State of California and is included on the list of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 2.19.4. Modification. To assure protection from and against the kind and extent of risk existing with the LICENSE USE, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LICENSEE thirty (30) days prior written notice. LICENSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the LICENSE USE.
- 2.19.5. Accident Reports. LICENSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Property or otherwise related to the LICENSE USE. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, photos or video, if any, and other pertinent information.
- 2.19.6. Severability of Interest. Each policy (except Workers' Compensation and Employers Liability) shall provide that LICENSEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 2.19.7. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LICENSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this AGREEMENT. LICENSEE shall provide proof

of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, LICENSEE shall immediately notify CITY and obtain replacement insurance as soon as possible.

- 2.19.8. Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the CITY before entering onto the PROPERTY or initiating any of the LICENSE USE under this AGREEMENT.

Commercial General Liability Insurance Endorsements.

- (i) Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of (a) ongoing operations performed by LICENSEE or on LICENSEE's behalf, (b) LICENSEE's products, (c) LICENSEE's work, including but not limited to LICENSEE's completed operations performed by LICENSEE or on LICENSEE's behalf or (d) premises owned, leased, controlled- or used by LICENSEE.
- (ii) Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents, and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of LICENSEE'S insurance and shall not contribute to it.
- (iii) Severability of Interest. The policy or policies must be endorsed to provide that LICENSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements.

- (iv) Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of automobile owned, leased, hired, or borrowed by or on behalf of the LICENSEE.
- (v) Severability of Interest. The policy or policies must be endorsed to provide that LICENSEE's insurance shall apply separately to each insured against

whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Worker's Compensation Insurance Endorsements.

- (vi) Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the CITY and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

- 2.19.9. LICENSEE shall have the right to self-insure with respect to any of the insurance required in this section. LICENSEE shall provide to CITY evidence of self-insurance satisfying the requirements in this section and indicating LICENSEE's self-insured status. Insurance or equivalent risk management covered by a joint powers' insurance authority may also satisfy the provisions of this section
- 2.20. Indemnification. LICENSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LICENSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this AGREEMENT or LICENSEE's occupancy, use or maintenance of the PREMISES, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LICENSEE's duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LICENSEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.
- 2.21. Nuisance and Noise Disturbances. LICENSEE shall not use the PREMISES in any manner which, in the opinion of the CITY creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area or that violates the CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
- 2.22. Encumbrances. LICENSEE shall keep the PREMISES free from all encumbrances and liens of any nature. LICENSEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost, or expense, including without limitation reasonable attorney fees and costs, relating to or charged against the PREMISES, including without limitation

LICENSEE'S failure or the failure of any contractor or subcontractor hired by LICENSEE to pay any person or persons entitled to lien or encumber the PREMISES pursuant to the California Civil Code.

- 2.23. Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by CITY prior to the commencement of the AGREEMENT, which approval may be granted or withheld in CITY's sole and absolute discretion.
- 2.24. Waiver. CITY'S failure to insist upon the strict performance of any of LICENSEE'S obligations under this AGREEMENT, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the PREMISES is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this AGREEMENT, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S failure to discover a breach of any obligation under this AGREEMENT, or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
- 2.25. Unauthorized Uses. The PREMISES shall not be used to engage in activities other than those authorized by LICENSE USE. Use of CITY-provided resources shall be limited to necessary and reasonable use related to LICENSE USE, as authorized by this AGREEMENT. Any activities carried out on at PREMISES beyond those authorized by LICENSE USE may be treated by CITY as a material breach of this AGREEMENT.
- 2.26. Termination
- a. CITY's Right to Terminate for Convenience. CITY may, at its sole option and for its convenience, terminate this AGREEMENT, as further set forth in Section 2.10.
 - b. LICENSEE'S Right to Terminate for Convenience. LICENSEE may terminate this AGREEMENT for convenience by giving notice as provided for in Section 2.31. LICENSEE's termination of this AGREEMENT shall be effective thirty (30) calendar days after receipt of the notice by CITY.
 - c. Termination of SERVICES AGREEMENT. This AGREEMENT shall terminate automatically upon the termination of the SERVICES AGREEMENT.
- 2.27. LICENSEE's Waiver. LICENSEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives, and agents for any burden, expense, or loss which LICENSEE incurs as a result of CITY's revocation or termination of this AGREEMENT.

- 2.28. California Public Records Act. CITY shall determine, in its sole discretion, whether this AGREEMENT or information provided to CITY by LICENSEE pursuant to this AGREEMENT is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). LICENSEE shall hold CITY, its elected officials, officers, employees, agents, and representatives harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.

CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LICENSEE as a result of CITY's disclosure or non-disclosure of this AGREEMENT or LICENSEE information requested pursuant to the CPRA. LICENSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH LICENSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF THIS AGREEMENT OR ANY LICENSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

- 2.29. Notice. In all cases where written notice is required under this AGREEMENT, service of such notice shall be deemed sufficient if the notice is deposited in the United States mail, postage prepaid. Proper notice shall be effective on the date it is mailed, unless otherwise provided in this AGREEMENT.

For the purposes of this AGREEMENT, unless otherwise modified by written amendment to this AGREEMENT, notice to CITY shall be addressed to:

City of San Diego
Real Estate Assets Department
Attn: Director
1200 Third Avenue, Suite 1700
San Diego, CA 92101

Notice to LICENSEE shall be addressed to:

FALCK MOBILE HEALTH CORPORATION
1517 W. Braden Court
Orange, CA 92868

- 2.30. Governmental Approvals. By entering into this AGREEMENT, neither CITY nor CITY's City Council is obligating itself to LICENSEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to LICENSEE's occupancy, use, development, maintenance, or restoration of the PREMISES. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
- 2.31. Permits & Approvals. LICENSEE, at LICENSEE's sole cost and expense, shall obtain all required permits, licenses, and approvals from the applicable local, state, and federal authorities, including without limitation from CITY.

- 2.32. Equal Pay Ordinance. Unless an exception applies, LICENSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. LICENSEE shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- 2.32.1. LICENSEE and Sub-licensee Requirement. The Equal Pay Ordinance applies to any sub-licensee of the PREMISES to the same extent as it would apply to LICENSEE. LICENSEE shall require sub-licensees to certify compliance with the Equal Pay Ordinance.
- 2.32.2. Notice Requirement. LICENSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
- 2.33. Equal Opportunity. LICENSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. LICENSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LICENSEE shall cause the foregoing provisions to be inserted in all LICENSEE's contracts for work related to this AGREEMENT so that such provisions will be binding upon each of LICENSEE's contractors. LICENSEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request LICENSEE shall submit a current Workforce Report. LICENSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this AGREEMENT and debarment from participating in CITY contracts for a period of not less than one (1) year.
- 2.34. Product Endorsement. LICENSEE shall comply with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to CITY as a user of a good or service must have the prior written approval of the Mayor.
- 2.35. Business Tax Certificate. Unless City's City Treasurer determines in writing that LICENSEE is exempt from the payment of business tax, LICENSEE is required to obtain a CITY business tax certificate and provide a copy of such certificated to CITY before commencing the LICENSE USE.
- 2.36. Disabled Access Compliance. LICENSEE shall, as applicable to the PREMISES and LICENSEE's possession, use, and occupancy of the PREMISES, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable state and federal laws, rules, and regulations of competent governmental authority enacted protecting the rights of people with disabilities. When a conflict exists between any federal or state accessibility requirements,

LICENSEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LICENSEE's compliance shall include without limitation the following:

- 2.36.1. LICENSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment;
- 2.36.2. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LICENSEE;
- 2.36.3. LICENSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
- 2.36.4. Where required by law, all improvements, fixtures, structures, or installations on the PREMISES will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the PREMISES which deny access to individuals with disabilities. All improvements and alterations will be at LICENSEE's sole expense. LICENSEE shall, at LICENSEE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the PREMISES which deny access to disabled persons; and
- 2.36.5. LICENSEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the provisions of this section.
- 2.36.6. LICENSEE's failure to comply with the accessibility requirements of this section or submitting false information in response to these accessibility requirements, or both, will be a default of this AGREEMENT.
- 2.36.7. LICENSEE and each of its sublicensees, if any, shall be individually responsible for their own ADA compliance program.
- 2.37. Equal Benefits. LICENSEE will comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require applicable parties of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this AGREEMENT, LICENSEE certifies that it will maintain such equal benefits throughout the Term of this AGREEMENT. LICENSEE'S failure to maintain equal benefits will be a default of this AGREEMENT.
- 2.38. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this AGREEMENT if LICENSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a

recommendation made to the San Diego City Council related to the selection of LICENSEE for this AGREEMENT. It is not the intent of this policy that these provisions apply to members of the City Council.

- 2.39. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the PREMISES has not been inspected by a Certified Access Specialist (CASP).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

- 2.40. No Affiliation. This AGREEMENT is between independent entities. Nothing in this AGREEMENT is intended to create the relationship of agent, servant, employee, partnership, joint venture, or association. Any provisions in the AGREEMENT that may appear to give CITY any right to direct the LICENSEE concerning the details of performance, or to exercise any control over such performance, shall mean only that LICENSEE shall follow the direction of CITY concerning the LICENSE USE.

- 2.41. Hazardous Materials. LICENSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the PREMISES by any of LICENSEE's officers, employees, agents, contractors, invitees and guests. LICENSEE and LICENSEE's officers, employees, agents, contractors, invitees and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the PREMISES without CITY's prior written consent. LICENSEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- a. Release. For all purposes of this AGREEMENT, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.

- b. Hazardous Substance. For all purposes of this AGREEMENT, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- c. Remediation. If LICENSEE's occupancy, use, development, maintenance, or restoration of the PREMISES results in a release of a Hazardous Substance, LICENSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the PREMISES, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- d. Removal. If LICENSEE or LICENSEE's officers, employees, agents, contractors, invitees and guests has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the PREMISES, LICENSEE shall remove all Hazardous Substances in any type of container, equipment or device from the PREMISES immediately upon or prior to the expiration or earlier termination of this AGREEMENT. CITY reserves the right to conduct inspections of the PREMISES and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the PREMISES. LICENSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- e. Indemnity. LICENSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LICENSEE's occupancy, use, development, maintenance, or restoration of the PREMISES, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LICENSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- f. Notice of Release. If LICENSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the PREMISES, LICENSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LICENSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LICENSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LICENSEE shall take all actions necessary to alleviate the danger. LICENSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the PREMISES.

- g. Environmental Assessment. Upon reasonable cause to believe that LICENSEE's occupancy, use, development, maintenance, or restoration of the PREMISES resulted in any Hazardous Substance being released on, from or beneath the PREMISES, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LICENSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LICENSEE's occupancy, use, development, maintenance, or restoration of the PREMISES, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the PREMISES, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LICENSEE shall cause, or if LICENSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the PREMISES and compliance with environmental laws and regulations are achieved, and LICENSEE shall pay all costs and expenses therefor.

- 2.42. Storm Water Pollution Prevention Program. CITY and LICENSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the PREMISES in a manner which aids in the protection of City's precious water resources. It is LICENSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LICENSEE will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately LICENSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, LICENSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

- 2.43. Severability. The unenforceability, invalidity, or illegality of any provision of this AGREEMENT shall not render any other provision of this AGREEMENT unenforceable, invalid, or illegal.
- 2.44. Joint and Several Liability. If LICENSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LICENSEE under this AGREEMENT.

- 2.45. Charter Section 225. Pursuant to City Charter Section 225, LICENSEE and each of its assignees and sublicensees shall make a full and complete disclosure of the name and identity of all natural persons who will receive more than ten percent (10%) of the contracted amount or who owns more than ten percent (10%) of the entity entering into this AGREEMENT or receiving or assuming any rights or obligations under this AGREEMENT.
- 2.46. Cumulative Remedies. CITY's rights and remedies under this AGREEMENT are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 2.47. Survival. Any obligation which accrues under this AGREEMENT prior to its expiration or termination shall survive such expiration or termination.
- 2.48. Exhibits Incorporated. All Exhibits referenced in this AGREEMENT are incorporated into this AGREEMENT by this reference.
- 2.49. Acceptance of PREMISES. By signing this AGREEMENT, LICENSEE represents and warrants that it has independently inspected the PREMISES and made all tests, investigations and observations necessary to satisfy itself as to the condition of the PREMISES and its suitability for the LICENSE USE. LICENSEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the PREMISES or its suitability for the LICENSE USE, and that LICENSEE is relying solely on its own and independent inspections, tests, investigations and observations of the PREMISES in entering into this AGREEMENT. LICENSEE accepts the PREMISES in its current condition. LICENSEE acknowledges and agrees that unless set forth in this AGREEMENT, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the PREMISES at any time either prior to, on or after the EFFECTIVE DATE. LICENSEE shall not hold CITY responsible for any defects in the PREMISES. LICENSEE accepts and assumes all risk of harm to all persons and property from any defects in the PREMISES or any improvements thereon and shall be solely responsible therefor.
- 2.50. Entire Agreement. This AGREEMENT supersedes all previous Agreements between the parties relating to LICENSEE's use of the PREMISES and constitutes the entire agreement between the parties. Any modification, alteration, or amendment of this AGREEMENT shall be in writing and signed by all the parties hereto.
- 2.51. Applicable Law, Venue, and Jurisdiction. This AGREEMENT shall be governed by and construed in accordance with California law. Any action by a party to this AGREEMENT to enforce or interpret its terms shall be maintained in the San Diego County Superior Court or the Federal District Court for the Southern District of California.
- 2.52. Counterparts and Electronic Signatures. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument. Electronic signatures

License Agreement

shall be deemed to be original signatures and each party hereto may rely on an electronic signature as an original for purposes of enforcing this AGREEMENT.

- 2.53. **Authority to Contract.** Each individual executing this AGREEMENT on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this AGREEMENT on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this AGREEMENT is binding upon such person or entity in accordance with its terms. Each person executing this AGREEMENT on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this AGREEMENT is executed to be effective as of the later date the Agreement is signed by the parties and approved by the City Attorney ("EFFECTIVE DATE").

Licensee:

Licensors:

FALCK MOBILE HEALTH CORP.,
a California corporation

CITY OF SAN DIEGO, a California municipal
corporation

By: Troy M. Hagen
Troy M. Hagen (Nov 30, 2021 17:53 PST)

By: Penny Maus
Penny Maus (Dec 3, 2021 09:24 PST)

Troy Hagen
Vice President

Penny Maus, Director
Real Estate Assets Department

By: Brian Richmond
Brian Richmond (Dec 2, 2021 15:15 PST)
Brian Richmond
Secretary

APPROVED as to form this _____ day
of _____, 2021.

MARA W. ELLIOTT, City Attorney

By: _____

EXHIBIT A



EXHIBIT B

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT TOBACCO AND SMOKE-FREE WORKPLACE POLICY	Number 95.94	Issue 1	Page 1 of 4
	Effective Date October 6, 2014		

1. PURPOSE

- 1.1. The City of San Diego (City) has a vital interest in maintaining a safe and healthy environment for its employees, volunteers, and contractors. To further that interest, the City has instituted a tobacco and smoke-free workplace. This Administrative Regulation establishes the policy for the City's tobacco and smoke-free workplace and identifies the disciplinary actions an employee may face for failing to comply with this policy. This Administrative Regulation incorporates existing state and local laws prohibiting or regulating smoking and tobacco use.

2. SCOPE

- 2.1 This Administrative Regulation applies to all *City Personnel*, as defined in paragraph 3.3 below.

3. DEFINITIONS

- 3.1 *City Buildings and Facilities* – Buildings and enclosed facilities and areas owned, leased, or operated by the City, including City airports, fueling areas, Petco Park, and Qualcomm Stadium.
- 3.2 *City Equipment* – Any equipment owned, leased, or operated by the City, including: (1) loaders, backhoes, or other equipment powered by fossil fuels, which include gasoline, diesel, propane and natural gas, and (2) electric equipment, including carts and other devices such as golf carts, Parking Enforcement vehicles or carts used by the Park and Recreation Department or other Departments..
- 3.3 *City Personnel* – All City employees, volunteers, and contractors, who either are paid by or perform services for the City.
- 3.4 *City Vehicle* – Any motorized vehicle, including a car, van, light duty truck, dump truck, street sweeper, refuse packer, or fire engine owned, leased, or operated by the City.

(New Administrative Regulation 95.94, Issue 1, effective October 6, 2014)

Authorized

[Signature on File]
CHIEF OPERATING OFFICER

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT	Number 95.94	Issue 1	Page 2 of 4
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- 3.5 *Electronic Cigarette* – An electronic device that delivers vapor for inhalation, including hookah pens, vape pipes, and electronic hookahs. Electronic Cigarette does not include any product approved by the United States Food and Drug Administration for sale as a drug or medical device.
- 3.6 *Smoke or Smoking* - The carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind.
- 3.7 *Smokeless Tobacco* - Either (i) a loose or flat, compressed cake form of tobacco that may be chewed or held in the mouth, or (ii) a shredded, powdered, or pulverized form of tobacco that may be inhaled through the nostrils, chewed, or held in the mouth, consistent with the definition set forth in California Health and Safety Code section 118950.
- 3.8 *Tobacco Products* – All substances containing tobacco leaf or derived from tobacco, including cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, kreteks, Smokeless Tobacco, or any other preparation of tobacco.
- 3.9 *Vape or Vaping* – Using an Electronic Cigarette in the following ways: (1) through inhalation or exhalation of vapor from an Electronic Cigarette; or (2) by holding or otherwise activating an Electronic Cigarette such that any vapor is being emitted from it.
4. POLICY
- 4.1 *Prohibition at City Buildings and Facilities, and in or around City Vehicles and City Equipment:*
- 4.1.1 *City Personnel* are prohibited from *Smoking, Vaping*, or using *Tobacco Products* at all times in *City Buildings or Facilities*, and in or around *City Vehicles and City Equipment*. This prohibition applies to all workplace areas, including all offices, cubicles, common work areas, elevators, hallways, parking structures, restrooms, dining areas, employee lounges, conference and meeting rooms, stairwells, and waiting areas.
- 4.1.2 This prohibition extends to all outdoor areas within 25 feet of entrances, exits, air intakes, or operable windows of all *City Vehicles and City Buildings and Facilities*.
- 4.1.3 *City Personnel* are only permitted to *Smoke, Vape*, or use *Tobacco Products* in designated areas outside of *City Buildings and Facilities*, as established by City Department Directors or designees.
- 4.2 *Prohibition at City Parks and Beaches:*

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT TOBACCO AND SMOKE-FREE WORKPLACE POLICY	Number 95.94	Issue 1	Page 3 of 4
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4.2.1 *City Personnel* are prohibited from *Smoking, Vaping*, or using *Tobacco Products*, while performing services for the City at City beaches and parks.

4.2.2 *City Personnel* are prohibited from *Smoking, Vaping*, or using *Tobacco Products* while wearing a City-issued or City-required uniform on paid breaks at City beaches and parks.

4.3 Incorporation of State and Local Laws:

4.3.1 This Administrative Regulation incorporates all applicable state and local laws prohibiting or regulating *Smoking, Vaping*, and using *Tobacco Products* in effect on or adopted or amended after the effective date of this Administrative Regulation. This Administrative Regulation is intended to be consistent with Chapter 4, Article 3, Division 10 of the San Diego Municipal Code, entitled "Regulations on Smoking and Use of Electronic Cigarettes."

4.3.2 *City Personnel* are required to comply with all applicable state and local laws, including all prohibitions set forth in the San Diego Municipal Code related to *Smoking* and use of *Tobacco Products* and *Electronic Cigarettes*.

5. PROCEDURE

5.1 Failure to comply with this Administrative Regulation may result in disciplinary action, up to and including termination of employment.

6. RESPONSIBILITY

6.1 It is the responsibility of all *City Personnel* to be aware of and to fully comply with this Administrative Regulation at all times.

6.2 All Department Directors are requested to post this Administrative Regulation in a conspicuous place where other citywide notices are posted.

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT TOBACCO AND SMOKE-FREE WORKPLACE POLICY	Number 95.94	Issue 1	Page 4 of 4
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APPENDIX

Legal References

City of San Diego Personnel Manual, Section L-2 (Discipline)
City of San Diego Municipal Code, Sections 43.1001 – 43.1008 (No smoking or vaping in an enclosed public place or an enclosed place of employment)
City of San Diego Municipal Code, Section 59.0202 (No smoking in City sports facilities)
City of San Diego Municipal Code, Section 63.20.16 (No smoking on City fishing piers)
City of San Diego Municipal Code, Section 68.0131 (No smoking in City airports)
California Health and Safety Code, Section 118875, *et seq.* (No smoking in public buildings and transportation)
California Government Code, Sections 7596-7598 (No smoking in public buildings, public passenger vehicles, and outdoor areas of public buildings)
California Labor Code, Section 6404.5 (No smoking in enclosed space)
California Health & Safety Code, Section 118947, *et seq.* (No smoking in motor vehicles)
California Health and Safety Code, Section 119405 (Electronic cigarette defined)

Subject Index

Smoking
Electronic Cigarette
Tobacco
Smokeless Tobacco

Administering Department

Human Resources Department