

AGREEMENT NO.

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES
AND
EMPATHIA PACIFIC, INC.

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board") and EMPATHIA PACIFIC, INC., 5234 Chesebro Road, Suite 201, Agoura Hills, CA 91301 ("Consultant").

WHEREAS, City requires Consultant to provide professional and specialized counseling services to Harbor Department employees and family members of a wide range of human resources – related issues including, but not limited to, substance abuse, marriage and family problems, dependent care, emotional, financial and legal problems; and

WHEREAS, Executive Director requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist the City in providing an employee assistance program and referral services; and

WHEREAS, Consultant possesses extensive experience in dealing with a broad range of issues including: substance abuse; marriage and family problems; emotional, financial, and legal problems; and assistance in finding child and elder care services; and

WHEREAS, Consultant, by virtue of training and experience, is well qualified to provide such services to City; and

WHEREAS, City does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to City, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit A ("Scope of Work").

B. Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or

other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon Executive Director's written request, Consultant shall supply City's Harbor Department ("Department") with all agreements between it and its Subconsultants.

E. The Specialized Health Care Service Plan Contract, attached as Exhibit H hereto, is incorporated into this Agreement. However, any inconsistencies between the Specialized Health Care Service Plan Contract and the terms in this Agreement shall be resolved in favor of the terms in this Agreement and not the Specialized Health Care Service Plan Contract.

II. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Consultant, upon its request, all documents and papers in possession of City which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article X (Termination) hereof.

C. Consultant shall provide Executive Director with reasonable advance written notice if it requires access to premises of Department. Subsequent access rights, if any, shall be granted to Consultant at the sole reasonable discretion of Executive Director, specifying conditions Consultant must satisfy in connection with such access. Consultant acknowledges that such areas may be occupied or used by tenants or contractors of City and that access rights granted by Department to Consultant shall be consistent with any such occupancy or use.

III. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. Consultant is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until the sixth Council meeting day after Board action or the City Council's approval of the Agreement.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Three (3) years have lapsed from the effective date of this Agreement;

or

2. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds

during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

V. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, City shall pay and reimburse Consultant at the rates set forth in Exhibit B.

B. The maximum payable under this Agreement, including reimbursable expenses shall be One Hundred Twenty Thousand Dollars (\$120,000).

C. Consultant shall submit invoices in quadruplicate to City monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. _____ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance.

(Consultant's Signature)

D. Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article VIII of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, audited and paid.

Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

Further, where the Consultant employs Subconsultants under this Agreement, the Consultant shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit C) listing SBE/SBE/MBE/WBE/DVBE/OBE amounts.

Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

E. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section
Harbor Department, City of Los Angeles
P.O. Box 191
San Pedro, CA 90733-0191

VI. RECORDKEEPING AND AUDIT RIGHTS

A. Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to City. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide City at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Article VI shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

VII. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. Consultant shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

VIII. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department. See Exhibit D.

IX. INDEMNIFICATION AND INSURANCE

A. Indemnification

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Consultant or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

B. Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Consultant's insurance documents. Consultant's insurance broker or agent shall register with the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Consultant's behalf.

C. General Liability Insurance

Consultant shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

D. Automobile Liability Insurance

Consultant shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

E. Workers' Compensation and Employer's Liability

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims

under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

F. Professional Liability Insurance

Consultant is required to provide Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be provided under this Agreement. This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability.

Consultant certifies that it now has professional liability insurance in the amount of One Million Dollars (\$1,000,000), which covers work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following acceptance of the completed project by Board.

Each policy shall include a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

Notice of occurrences of claims under the policy shall be made to the City Attorney's office with copies to Risk Management.

G. Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

H. Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

I. Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

J. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Consultant shall direct their insurance broker or agent to submit to the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be deducted from the next payment due Consultant.

K. Right to Self-Insure

Upon written approval by the Executive Director, Consultant may self-insure if the following conditions are met:

1. Consultant has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Consultant must have a formal resolution of its board of directors authorizing self-insurance.
2. Consultant agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
3. Consultant agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Consultant agrees that any insurance carried by Department is excess of Consultant's self-insurance and will not contribute to it.
5. Consultant provides the name and address of its claims administrator.
6. Consultant submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal

years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.

7. Consultant agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. Consultant has complied with all laws pertaining to self-insurance.

L. Accident Reports

Consultant shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

X. TERMINATION PROVISION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the City to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

XI. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the interests of the Department.

B. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on the City to such Subconsultant(s) or give the Subconsultant(s) any rights against the City.

XII. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit E.

XIII. SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit F.

It is also the policy of the Department to support an increase in local and regional jobs. The Department's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector. Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities present themselves.

NOTE: Prior to being awarded a contract with the City, Consultant and all Subconsultants must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

XIV. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the Department. All parties hereto agree that they are unaware

of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

XV. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

XVI. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

XVII. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by Consultant in the performance of this Agreement.

XVIII. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by City as soon as they are developed, whether in draft or final form. City has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that City at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for City the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the

Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by City, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the City, its boards, officers, agents or employees, is not given in confidence. Accordingly, City or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

B. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City. Upon City's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between City and Consultant, the referenced license shall arise for City's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. City may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

XIX. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

XX. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Director of Human Resources, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Consultant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XXI. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Consultant declares that its authorized TIN is 95-3070501. No payments will be made under this Agreement without a valid TIN.

XXII. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Consultant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

XXIII. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Consultant and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Consultant and/or Subconsultant's employees.

The Consultant and/or Subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Consultant and/or Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Consultant or Subconsultant will maintain such compliance throughout the term of this Agreement.

XXIV. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Consultant shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Consultant and pursue any and all other legal remedies that may be available. See Exhibit G.

XXV. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Consultant, Subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Consultant is required to provide and update certain information to the City as specified by law. Any Consultant subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. _____. Pursuant to City Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subconsultant is required to provide to Consultant names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. Subconsultant's information must be provided to Consultant within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

Consultant, Subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

XXVI. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Consultant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

XXVII. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

XXVIII. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

XXIX. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

XXX. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

XXXI. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

XXXII. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

XXXIII. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

XXXIV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Dated: _____

By _____
Executive Director

Attest: _____
Secretary

EMPATHIA PACIFIC, INC.

Dated: _____

By _____

(Print/type name and title)

Attest _____

(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

_____, 2013
CARMEN A. TRUTANICH, City Attorney
JANNA B. SIDLEY, General Counsel

By _____
MINAH PARK, Deputy City Attorney

MP:jpr
Attachments
04/03/13

Account #	51790	W.O. #	_____
Ctr/Div #	0530	Job Fac. #	_____
Proj/Prog #	000		
Budget FY:		Amount:	
	FY 12/13	\$	5,000
	FY 13/14	\$	40,000
	FY 14/15	\$	40,000
	TOTAL:	\$	120,000
For Acct/Budget Div. Use Only:			
Verified by:	_____		
Verified Funds Available:	_____		
Date Approved:	_____		

EXHIBIT A

EMPLOYEE ASSISTANCE PROGRAM SERVICES

SERVICES

1. Problem assessment, counseling, and referral services to employees of the Harbor Department and their family members. The complete counseling and referral services shall not exceed seven (7) one-hour sessions for each employee or family member per problem. The counseling sessions will take place at a location agreed upon between the employee or family member and the counselor.
2. Short-term problem resolution designed to prevent clinically unnecessary referrals to treatment resources when a problem is less severe in nature and does not require long-term counseling.
3. Resource and referral services for employees of the Harbor Department in need of child care, elder care, or other dependent care. Harbor Department employees will be given the name and phone number of three (3) or more, if available, care givers who meet specific needs and who have confirmed openings within 24 hours of their initial call. Harbor Department employees will also be given a packet of information relative to the dependent care need.
4. Online interactive tools, resources and information at Empathia's web site.
5. 24-hour per day, seven days a week, toll-free telephone help line for Harbor Department employees and family members for intake and referral, crisis intervention and resource finding and for Harbor Department managers and/or supervisors for consultation regarding intervention strategies with employees exhibiting work performance concerns.
6. Specialized consultation for legal concerns of employees of the Harbor Department and their family members, except for employment and business law matters.
7. Specialized consultation for financial concerns of employees of the Harbor Department and their family members, including counseling on budgeting and debt management issues.
8. Assistance in publicizing the EAP services.
9. Monthly and quarterly newsletters.
10. Promotional materials upon request.

11. Above items are to be provided on an as-needed bilingual basis, particularly Spanish, to employees and their family members who do not speak English.
12. Case management and follow-up.
13. Management/supervisory training, employee orientation, and education workshops as requested by the Harbor Department.
14. Quarterly program utilization reports to management.
15. Conduct online employee exit interviews, providing quarterly reports.
16. Trauma response services, up to a maximum cap of \$5,000 per incident.

EXHIBIT B

EMPLOYEE ASSISTANCE PROGRAM FEES

FEES

The fees shall be as follows:

The Harbor Department shall be charged a flat fee of \$2.20 per employee, per month, based on 950 employees.

In addition to the flat fee, the Harbor Department shall incur costs when rendered for dependent care resource and referral services, training services, trauma response services, psychological evaluations, mileage, and promotional materials as follows:

- | | |
|---|--|
| a. Dependent care resources and referral | \$150.00 per case |
| b. Training | \$200.00 per hour |
| c. Trauma Response Services | \$250.00 per hour
(above cap of \$5,000 per incident) |
| d. Psychological Evaluations | \$225.00 per hour |
| e. Mileage for consultant if requested
and approved by the Harbor Department | \$0.30 per mile |
| f. Promotional materials | At cost |

MONTHLY SUBCONSULTANT MONITORING REPORT

Instructions: Please indicate the SBE/MBE/WBE/OBE/DBE participation levels achieved for the month of _____ covered by the referenced contract number.

Contract No. _____ Division _____ Contractor Administrator _____

Contractor _____ *Group _____ Contract Title/Project _____

Contract Amount _____ Start Date _____ End Date _____

Total Amount Invoiced to Date _____

SBE Mandated Participation Percentage SBE VSBE

Proposed Subcontractor Percentage MBE WBE OBE DVBE

	Name of Subcontractor	Type of Work Performed	SBE/VSBE/MBE/WBE/OBE/DBE	PROPOSED			ACTUALS		
				Original Proposed Amount	Original Proposed Percentage	Amount Paid to Date	Amount Paid to Date Percentage	Contract Amount Percentage	
1									
2									
3									
4									
5									
6									
7									
8									
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Directions: Original Proposed Percentage: Original Proposed Percentage of Total Contract Amount
 Amount Paid to Date Percentage: Percentage of Total Amount Invoiced to Date
 Contract Amount Percentage: Percentage Paid to Date of Total Contract Amount

* Group = (SBE/VSBE/MBE/WBE/OBE/DVBE/DBE)

EXHIBIT D

BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

The City of Los Angeles Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal Code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the office listed below, or log on to www.lacity.org/finance to download the business tax registration application.

MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101

(213) 473-5901

EXHIBIT E - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, 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, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. 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.
- B. 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, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, 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 contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. 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 Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

EXHIBIT E - AFFIRMATIVE ACTION PROGRAM PROVISIONS

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such 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 Board of Public Works, Office of Contract Compliance. No such 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.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract 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 of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. 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 of Los Angeles, 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 contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, 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 contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it

EXHIBIT E - AFFIRMATIVE ACTION PROGRAM PROVISIONS

registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. 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 Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;

EXHIBIT E - AFFIRMATIVE ACTION PROGRAM PROVISIONS

4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract 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;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles 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 or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract 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 contract with the City.

EXHIBIT F

SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM

The City of Los Angeles Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Harbor Department in a manner that reflects the diversity of the City of Los Angeles. The Harbor Department's Small Business Enterprise (SBE) Program was created to provide additional opportunities for small businesses to participate in professional service and construction contracts. An overall Department goal of 25% SBE participation, including 5% Very Small Business Enterprise (VSBE) participation, has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work.

It is the policy of the Harbor Department to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, VSBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBES). The SBE Program allows the Harbor Department to target small business participation, including MBEs, WBEs, and DVBES, more effectively. It is the intent of the Harbor Department to make it easier for small businesses to participate in contracts by providing education and assistance on how to do business with the City, and ensuring that payments to small businesses are processed in a timely manner. **In order to ensure the highest participation of SBE/VSBE/MBE/WBE/DVBES, all proposers shall utilize the City's contracts management and opportunities database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>, to outreach to potential subcontractors.**

The Harbor Department defines a SBE as an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121. Go to www.sba.gov for more information. The Harbor Department defines a VSBE based on the State of California's Micro-business definition which is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be __%, including __% VSBE participation.** The North American Industry Classification System (NAICS) Code for the scope of services is _____. This NAICS Code is the industry code that corresponds to at least 51% of the scope of services and will be used to determine the size standard for SBE participation of the Prime Consultant. The maximum SBE size standard for this NAICS Code is \$_ million.

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs. The Consultant shall not substitute an SBE firm without obtaining prior approval of the City. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Consultant shall endeavor to make an in-kind substitution for the substituted SBE.

(2) LOCAL BUSINESS PREFERENCE PROGRAM:

The Harbor Department is committed to maximizing opportunities for local and regional businesses, as well as encouraging local and regional businesses to locate and operate within the Southern California region. It is the policy of the Harbor Department to support an increase in local and regional jobs. The Harbor Department's Local Business Preference Program (LBPP) aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector.

The Harbor Department defines a LBE as:

- (a) A business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or
- (b) A business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.

In order for Harbor Department staff to determine the appropriate LBE preference, Consultant shall complete, sign, notarize (where applicable) and submit the attached Affidavit and Contractor Description Form. The Affidavit and Contractor Description Form will signify the LBE status of the Consultant and subconsultants. Prior to contract award, the Harbor Department will verify the status of all LBEs.

Consultant shall complete, sign, notarize (where applicable) and submit as part of the executed agreement the attached Affidavit and Contractor Description Form. The Contractor Description Form, when signed, will signify the Consultant's intent to comply with the SBE and LBPP requirements. Prior to contract award, the Harbor Department will verify the status of all SBEs. In addition, prior to being awarded a contract with the Harbor Department, all contractors and subcontractors must be registered on LABAVN.

In the event of Consultant's noncompliance during the performance of the Agreement, Consultant shall be considered in material breach of contract. In addition to any other remedy available to City under this Agreement or by operation of law, the City may withhold invoice payments to Consultant until noncompliance is corrected, and assess the costs of City's audit of books and records of Consultant and its subconsultants. In the event the Consultant falsifies or misrepresents information contained in any form or other willful noncompliance as determined by City, City may disqualify the Consultant from participation in City contracts for a period of up to five (5) years.

AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on **the attached Contractor Description Form** is true and correct and include all material information necessary to identify and explain the operations of

Name of Firm

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to the Harbor Department, complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents in association with this agreement."

(1) **Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

SBE VSBE MBE WBE DVBE OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

(2) **Local Business Preference Program:** Please indicate the Local Business Enterprise status of your company.

Only one box must be checked:

LBE Non-LBE

- A Local Business Enterprise (LBE) is: (a) a business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or (b) a business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.
- A Non-LBE is any business that does not meet the definition of a LBE

Signature _____
Printed Name _____

Title _____
Date Signed _____

NOTARY

On this _____ day of _____, 20____, before me appeared
 _____ to me personally known, who being duly sworn, did execute the

 Name
 foregoing affidavit, and did state that he/she was properly authorized by _____

 Name of Firm
 to execute the affidavit and did so as his or he free act and deed.

SEAL

Notary Public _____
Commission Expires _____

Contractor Description Form

PRIME CONTRACTOR

Contract #: _____ Award Date: _____ Contract Term: _____
Contract Title: _____
Business Name: _____ Award Total: \$ _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)
Local Business Enterprise: YES _____ No _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)
Local Business Enterprise: YES _____ No _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)
Local Business Enterprise: YES _____ No _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

Contractor Description Form

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)
Local Business Enterprise: YES _____ No _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)
Local Business Enterprise: YES _____ No _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)
Local Business Enterprise: YES _____ No _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

EXHIBIT G

Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

(c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) Mandatory Contract Provisions Pertaining to Equal Benefits. Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

EMPATHIA

Employee Assistance Program (EAP)

Specialized Health Care Service Plan Contract

Empathia Pacific, Inc.
5234 Chesebro Road, Suite 201
Agoura Hills, California 91301

(818) 707-0544

Web site: www.empathia.com

SPECIALIZED HEALTH CARE SERVICE PLAN CONTRACT

This Specialized Health Care Service Plan Contract ("Subscriber Contract") is made between Empathia Pacific, Inc., a California Corporation (The Plan), and (Subscriber), in support of the Business Proposal dated (Attachment *). The terms of the Subscriber Contract between The Plan and Subscriber are as follows:

- 1.0 The Plan has a Knox-Keene License from the State of California, Department of Managed Health Care.
- 2.0 The Plan is retained by Subscriber to develop, implement, and provide ongoing Employee Assistance Program (EAP) services. The Plan warrants its work will conform to the highest professional standards in its field.

SECTION I - DEFINITIONS

- 3.0 The following definitions apply to this Specialized Health Care Service Plan Contract:
 - 3.1 BENEFITS means those Covered Services an Enrollee is entitled to receive under the applicable Empathia Pacific, Inc. Specialized Health Care Service Plan Contract.
 - 3.2 BENEFIT PERIOD means a period identified by the Specialized Health Care Service Plan Contract (usually twelve months), which serves to limit your Covered Services for that period of time.
 - 3.3 COBRA means Consolidated Omnibus Budget Reconciliation Act of 1985 for continued access to health insurance coverage to be provided to Enrollees, and their dependents, of Subscribers with 20 or more eligible Enrollees.
 - 3.4 COMBINED EVIDENCE OF COVERAGE/DISCLOSURE FORM (EOC/DF) means the certificate, agreement, contract, brochure, or letter of entitlement issued to a Subscriber or Enrollee setting forth the coverage to which the Subscriber or Enrollee is entitled. The document is attached to this Subscriber Contract as Exhibit A.
 - 3.5 COMMUNITY SERVICES are defined as qualified long-term behavioral health and/or chemical dependency treatment resources. Community Services are not included under this specialized health care service plan contract.
 - 3.6 CO-PAYMENT means the amount, if any specified herein, which represents the Enrollees portion of the cost of Covered Services. There are no Co-Payments required of any Enrollee.
 - 3.7 COVERED SERVICES means EAP services that are covered by The Plan.

- 3.8 CRISIS is the perception or experiencing of an event or situation as an intolerable difficulty that exceeds the person's current resources and coping mechanisms and that has the potential to cause behavioral and cognitive malfunction.
- 3.9 CRISIS INTERVENTION means the process of responding to a request for immediate services in order to determine whether or not a medical-psychiatric emergency or urgent situation exists and to otherwise assess the needs for short-term counseling, referrals to community resources and/or referrals to medical psychiatric services.
- 3.10 EFFECTIVE DATE means the actual calendar date when your Specialized Health Care Service Plan Contract becomes effective. This date is found on page 1, line 1 of the Subscriber Contract.
- 3.11 EMERGENCY MEDICAL CONDITION means a medical condition manifesting itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.
- 3.12 EMERGENCY SERVICES includes medical screening, examination and evaluation by a physician, or other appropriate Providers under the supervision of a physician to determine if an Emergency Medical Condition exists, and if it does, the care, treatments, and surgery by a physician necessary to relieve or eliminate the Emergency Medical Condition. Emergency Services also include screening examination and evaluation by an MD psychiatrist, physician or other applicable Providers within the scope of their licenses to determine if a psychiatric medical condition exists and the care and treatment necessary to relieve or eliminate the psychiatric Emergency Medical Condition.
- 3.13 ENROLLEE means an employee/family members of the employer organization and who is a recipient of services from The Plan.
- 3.14 EXCLUSIONS means services that are not covered under this Subscriber Contract.
- 3.15 FRAUD - The deliberate submission of false information by a Provider, Subscriber, Enrollee, plan employee or other individual or entity, to gain an undeserved payment on a claim or false information relating to the number of Enrollees covered under the Subscriber Contract with The Plan or false information relating to making formal management referrals or deceptive practices that violate the confidentiality of the Enrollee and demands for confidential Enrollee information that would violate federal and state law governing confidentiality and professional codes of ethics for employee assistance program services Providers, and mental health professionals.

- 3.16 GRIEVANCE means a written or oral expression of dissatisfaction regarding The Plan and/or Provider, including quality of care concerns, and shall include a complaint, dispute, request for reconsideration or appeal made by an Enrollee or the Enrollee's representative. Where The Plan is unable to distinguish between a Grievance and an inquiry, it shall be considered a Grievance.
- 3.17 LIMITATION means the maximum number of EAP counseling sessions an Enrollee is eligible to receive under the Subscriber Contract per problem.
- 3.18 PREMIUM means the sum of money paid monthly to The Plan that entitles the Enrollee to receive the Covered Services provided by The Plan (Empathia Pacific, Inc. Employee Assistance Program).
- 3.19 PROVIDER means a clinical psychologist (PhD), licensed clinical social worker (LCSW), marriage family and child therapist (MFT), or certified addictions counselor (CAC) who provides EAP assessment, referral and short-term counseling services to Enrollees under The Plan.
- 3.20 SESSION means an outpatient visit with the Provider conducted on an individual basis during which counseling services are delivered.
- 3.21 SPECIALIZED HEALTH CARE SERVICE PLAN CONTRACT means a contract for health care services in a single specialized area of health care, for Subscribers or Enrollees, or which pays for or which reimburses any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the Subscribers or Enrollees.
- 3.22 SUBSCRIBER means the person who is responsible for payment to a plan. The employer organization contracting with The Plan for EAP services is responsible for payment to The Plan.

SECTION II - SUBSCRIBER SERVICES

COVERED SERVICES

- 4.0 The Subscriber has contracted for a Session model Employee Assistance Program.
- 5.0 The Plan will provide EAP services to Subscriber's employees, hereafter referred to as Enrollees, at times and locations(s) agreed to and arranged by The Plan and the Enrollees.
- 5.1 Services will be provided through a contracted Provider on an off-site basis, within 30 minutes or a 15 mile radius of the eligible Enrollee's home or office location. The Plan has also established reasonable patterns of practice for more urban and rural areas; 15 minutes or 7 mile radius in more urban areas; with rural areas not to exceed 60 minutes or 50 mile radius of a contracting Provider.
- 5.2 All persons who reside with an Enrollee on a non-commercial basis are eligible for services under this Subscriber Contract.

Any minor child or spouse/former spouse, who does not permanently reside with the Enrollee and is ordered by the court that coverage be provided, is also eligible.

- 6.0 The Plan will provide EAP assessment and referral to community resources, and/or psychiatric Emergency Services, and/or short-term counseling services that are appropriate to help Enrollees resolve their personal problems. The Plan offers counseling services for a wide range of personal problems and immediate response for Crisis situations.
- 7.0 These services are a blend of clinical and worksite services that are based in EAP core technology as defined by the U. S. Department of Health and Human Services and the International Employee Assistance Professionals Association, regardless of the educational background and licensure level of the Provider. Listed services are provided through Providers who have agreed to enter into a written contract with Empathia Pacific, Inc.
- 7.1 All contracting Providers are appropriately licensed and/or certified qualified clinical professionals who function as EAP counselors within the scope of employee assistance services and shall comply with professionally recognized standards of practice and all applicable state and federal laws.
- 7.2 EAP Providers may be licensed as Marriage Family and Child Therapists (MFT), Licensed Clinical Social Workers (LCSW), Clinical Psychologists (PhD), and Certified Addictions Counselor (CAC). All perform EAP counseling within the defined scope of EAP services.
- 8.0 The Plan provides clinical counseling for the following issues:
- o Marital or Relationship Difficulties
 - o Family and Child Problems
 - o Stress/Anxiety
 - o Depression
 - o Grief and Loss
 - o Substance Abuse
 - o Domestic Violence
 - o Job Performance Issues
 - o Crisis Intervention
 - o Communication and/or Conflict Issues
 - o Weight and eating disorders
- 9.0 The Plan provides individual and or family outpatient counseling focused on problem resolution, helping the individual and/or family develop early stage prevention skills that improve their quality of life and family relationships, and that encourages early self-detection and resolution of personal and/or family problems before they become

unmanageable requiring professional assistance.

10.0 **Emergency Health Condition**

10.1 **Emergency Services.** In the event of a medical emergency, the Enrollee should call 911 or go to the nearest hospital emergency room. Medical emergencies and services for medical emergency or other medical care are not Covered Services and will not be paid by the EAP.

Enrollees are encouraged to use appropriately the "911" emergency response system, in areas where the system is established and operating, when they have, or believe they have, an emergency psychiatric or medical condition that requires an emergency response.

- 10.2 The Plan provides 24-hour telephone Crisis Intervention. The EAP will determine whether or not a clinical emergency exists and provide appropriate intervention, as well as assess the need for short-term counseling, referrals to community resources or referrals for medical emergency care and treatment.
- 10.3 Where there is no clinical emergency, but the Enrollee or dependent has an urgent need to see a Provider within 48 hours to address a serious problem or condition, the EAP will schedule the Enrollee with a Provider who will offer an appointment within this time frame.
- 11.0 The Plan will maintain a 24-hour EAP HelpLine for calls from eligible Enrollees. Enrollees call the EAP HelpLine for confidential assistance and access to assessment referral and short-term counseling from The Plan's network of Providers.
- 12.0 The Plan will conform to all applicable state and federal regulations concerning confidentiality.
- 13.0 The Plan will maintain confidential records on EAP Enrollees for a period of seven (7) years. All records which The Plan prepares and maintains are the sole property of The Plan and will be confidentially retained by The Plan in the event this Subscriber Contract is terminated.
- 14.0 The Plan will provide a notice to Enrollees in the evidence of coverage, plan newsletter, or any direct plan communication to Enrollees, information regarding organ donation options. This notice shall inform Enrollees of the societal Benefits of organ donations and the method whereby they may elect to be an organ or tissue donor and goes as follows:

"There is a need for organ donors across the Country. You can agree to have your organs donated in the event of your death. If you wish to become an organ donor or tissue donor, the California Department of Motor Vehicles (DMV) can give you a donor card that you carry with your driver's license or I.D. card, and a donor sticker to place on the front of your driver's license or I.D. card."

CO-PAYMENTS, DEDUCTIBLES AND OTHER FEES

- 15.0 There are no Co-Payments or deductibles required from an Enrollee. The Subscriber who has contracted with The Plan to provide EAP services under the Subscriber Contract pays all fees for EAP services provided under the Plan. Upon each case opening, the Plan shall inform the Enrollee of the number of visits he/she may be entitled to receive under the Plan.

EXCLUSIONS

- 16.0 The following services are specifically excluded from Covered Services provided under this Subscriber Contract.
- (a) Aversion Therapy
 - (b) Biofeedback and hypnotherapy
 - (c) Court-ordered services required as a condition of parole or probation
 - (d) Services for remedial education including evaluation or treatment of learning disabilities or minimal brain dysfunction; developmental and learning disorders; behavioral training; or cognitive rehabilitation
 - (e) Treatment or diagnostic testing related to learning disabilities, developmental delays, or educational testing or training
 - (f) Services received from a non-contracting Provider, unless the Plan provides prior approval
 - (g) Psychological testing
 - (h) Examinations and diagnostic services in connection with the following: obtaining or continuing employment; obtaining or maintaining any license issued by a municipality, state or federal government; securing insurance coverage; foreign travel or school admissions
 - (i) Services of a psychiatrist (M.D.), including medication management or medication consultation
 - (j) Prescription drugs
 - (k) Inpatient, Outpatient, or Residential services for behavioral health or substance abuse treatment
 - (l) Services for which the Subscriber promotes use through monetary or other material incentives or rewards offered or provided to Enrollees who use or are encouraged to use such services.
- 17.0 A Plan Provider will, when clinically appropriate, refer an Enrollee to appropriate community resources for counseling whenever the assessment clearly indicates that the problem cannot be resolved by short-term counseling. Enrollees shall be advised that they are responsible for any costs or fees for services provided by the community resource.

LIMITATION

- 18.0 When short-term counseling is clinically appropriate, Enrollees may receive up to the maximum number of Sessions of EAP counseling for each problem, based on the Plan design the Subscriber has contracted for under the Specialized Health Care Service Plan Contract.
- 19.0 **Complaint/Grievance**
- 19.1 An Enrollee may request voluntary mediation with the Plan prior to submitting a formal Grievance. This does not preclude the right of the Enrollee to submit a written Grievance.
- 19.2 The Plan has established a Grievance process for receiving and resolving Enrollee complaints or Grievances with Empathia Pacific, Inc. - Employee Assistance Program and its contracted EAP Providers. If Enrollees have any problem with services delivered through Empathia Pacific, Inc., our Member Services Department should be able to assist them and resolve those problems.
- 19.3 A Member Services Officer reviews any complaint involving care that has been received or denied. In the case of a denial, the reviewer will not have been involved in the initial denial of services.
- 19.4 Enrollee may file a complaint by writing to: Empathia Pacific, Inc., Attention: Member Services Officer, 5234 Chesebro Road, Suite 201, Agoura Hills, CA 91301, or via toll-free number **1-800-367-7474**, or online at www.mylifematters.com.
- 19.5 The Member Services Officer will advise the Enrollee that the Plan will acknowledge in writing receipt of the Grievance within five (5) calendar days and will provide written resolution of the Grievance within (30) calendar days of receipt.
- 19.6 If a Grievance requires an urgent attention, it will be resolved within 48 business hours.
- 20.0 **Review by the Department of Managed Health Care**

The California Department of Managed Health Care is responsible for regulating health care service plans. If you have a Grievance against the health plan, you should first telephone the Plan at **1-800-367-7474** and use the Plan's Grievance process before contacting the Department for assistance. The Member Services Department is available to assist you with any complaints and Grievances. Utilizing this Grievance procedure does not prohibit any potential legal rights or remedies that may be available to you.

If you need help with a Grievance involving an emergency, a Grievance that has not been satisfactorily resolved by the health plan, or a Grievance that has remained unresolved for more than 30 days, you may call the department for assistance. You may also be eligible for an Independent Medical Review (IMR).

If you are eligible for IMR, the IMR process will provide an impartial review of medical decisions made by a health plan related to the medical necessity of a proposed service or treatment, coverage decisions for treatments that are experimental or investigational in nature and payment disputes for emergency or urgent medical services. The Department also has a toll-free telephone number (1-888-466-2219) and a TDD line (1-877-688-9891) for the hearing and speech impaired. The Department's Internet Web site <http://www.hmohelp.ca.gov> has complaint forms, IMR application forms and instructions online.

21.0 **Additional Disclosures.**

Please refer to the Combined Evidence of Coverage/Disclosure Forms (EOC/DF), attached as Exhibit A of this Subscriber Contract, for additional disclosures that pertain to the Plan.

Organ Donation Notice: There is a need for organ donors across the Country. You can agree to have your organs donated in the event of your death. If you wish to become an organ donor or tissue donor, the California Department of Motor Vehicles (DMV) can give you a donor card that you carry with your driver's license or I.D. card, and a donor sticker to place on the front of your driver's license or I.D. card

- 22.0 **Premium.** The Plan will provide services to Subscriber on a per-capita basis of \$ per Enrollee per month, for Enrollees, for the period of **through** as set forth in the attached Business Proposal dated , payable in monthly installments on or before the first day of each calendar month. The fee includes those services as specified in the Business Proposal. Terms for services paid pursuant to the fee schedule; Net 30 days, date of invoice. The Plan reserves the right to renegotiate service fees and other contract provisions on an annual basis at the time of Subscriber Contract renewal unless otherwise specified and agreed to between Subscriber and the Plan. An addendum to the Specialized Health Care Service Plan Contract will be mailed if an increase is approved.
- 23.0 The Plan agrees to assume the risk of and liability for and shall indemnify, defend, protect, and hold harmless Subscriber and its officers, agents and employees from and against any and all claims, damages, suits, judgments, liabilities, losses, court costs and expenses, arising out of or in the course of performance of services under its Subscriber Contract by the Plan. Subscriber agrees to assume the risk of and liability for and shall indemnify, defend, protect, and hold harmless the Plan and its officers, agents and employees from and against any and all claims, damages, suits, judgments, liabilities, losses, court costs and expenses arising out of the negligence of Subscriber or its employees/representatives.
- 24.0 The Plan will maintain, during life of this Subscriber Contract, general liability professional malpractice insurance in the minimum amount of One Million Dollars (\$1,000,000) per each occurrence limit and Three Million Dollars (\$3,000,000) aggregate limit. Providers under contract to the Plan maintain professional liability insurance of not less than \$1,000,000 per claim or \$3,000,000 annual aggregate.

- 25.0 The Plan agrees its relationship to the Subscriber during the terms of this Subscriber Contract is that of an independent contractor; and, as such, the Plan has no right or authority to commit or otherwise obligate Subscriber or any of its affiliates to any third party in any manner.
- 26.0 The Plan agrees that as an independent contractor no Social Security, Federal, or State income tax will be deducted by Subscriber and no retirement and unemployment Benefits, disability, old age, survivors, workmen's compensation, and hospital insurance, or other Benefits available to Subscriber's Enrollees will accrue.
- 27.0 The Plan will enter into no sub-contracts, employment contracts, or agency relationships that do not specifically require the subcontractor, employee, or agent to abide by the terms of this Subscriber Contract.
- 28.0 The Plan will not refuse to enter into any contract or will not cancel or decline to renew or reinstate any contract, and will not discriminate against any employee, Provider, Subscriber, or applicant, because of race, religion, color, sex, age, marital status, handicap status, veteran status, sexual orientation, ancestry or national origin and agrees that to the extent this contract is applicable, the Plan will comply with all applicable provisions and requirements of Executive Order 11246 as amended by Executive Order 11375 setting forth the rules, regulations and relevant orders of the Secretary of Labor as well as California Statutes 12940 (Non-Discrimination in Employment), 12945 (Pregnancy Leave Non-Discrimination), and Section 504 of the Federal Rehabilitation Act of 1973 (Non-Discrimination of Handicap).
- 29.0 Subscriber and the Plan agree this Subscriber Contract may be expanded upon mutual agreement to include additional Enrollees, locations, times, or geographical areas.
- 30.0 This Subscriber Contract shall have a term of _____ months (the "Initial Term") and shall automatically renew on the same terms and conditions for annual periods of 12 months (each, a "Renewal Term") at the end of the Initial Term and each Renewal Term unless either the Plan or Subscriber give the other notice of termination not less than ninety (90) days before the end thereof.
- 31.0 **Termination**
- 31.1 **Subscriber Termination:** Subscriber shall have the option to terminate this Subscriber Contract upon sixty (60) days notice to the Plan which notice shall specify concerns and/or complaints expressed by employees or Enrollees regarding use of services, and which concerns and/or complaints shall not be resolved by the Plan to Subscriber's satisfaction during such sixty day notice period.
- 31.1.1 Subscriber agrees to provide its Enrollees [employees and family members] notice of the termination.
- 31.2 **Plan Termination:** The Plan shall have the right to terminate this Subscriber Contract upon written notice to Subscriber in the following circumstances:
- 31.2.1 **Termination of contract with Subscriber for non-payment:** The Plan may terminate this contract *for cause* if Subscriber fails to pay the amount

owing to the Plan when due and shall not have cured that failure in full within thirty (30) days following the Plan's notice of that failure. The Plan will provide Subscriber not less than thirty (30) days notice of the intent to terminate the contract for nonpayment. If payment is not received within those thirty (30) days, the Plan will terminate the contract for non-payment by issuing a Notice of Termination to Subscriber. Enrollee coverage will terminate fifteen (15) days after Subscriber provides notice to Enrollees of the termination of its contract with the Plan.

31.2.1.1 If the Plan accepts payment after the thirty (30) days have elapsed from the date of notice and the Subscriber Contract has been terminated for nonpayment, the contract shall be reinstated as though it had never been cancelled. After termination, the Plan will permit reinstatement of the contract as if it had not been terminated, once during any twelve (12) month period, if Subscriber pays the delinquent fees prior to the next payment date.

31.2.1.2 **Subscribers Duty to Notify Enrollees:** Subscriber is required to provide its Enrollees a legible, true copy of any notice of cancellation received from the Plan. Subscriber will provide the Plan with proof, in the form of an attestation from individual performing the mailing, within five (5) business days of the date the Plan provided notice of cancellation. The Plan will terminate coverage to Enrollees fifteen (15) days after Subscriber provides notice to Enrollees, based on the date of mailing the notice to Enrollees.

31.2.1.3 Subscriber is responsible for Premiums until the Effective Date of termination. The Plan shall return any pro rata portion of fees paid to the Plan by Subscriber for any payment that has been received for any unexpired period.

31.2.2 The Plan reserves the right to cancel this Subscriber Contract for Fraud or deception by the Subscriber in obtaining this Contract or in the use of EAP services by Enrollees. The Plan also reserves the right to cancel the coverage of any Enrollee under this Contract for fraud or deception in the use of EAP Services by that Enrollee or person claiming to be a family member or dependent of that Enrollee. "*Fraud*" means knowingly making, or causing, or permitting to be caused false statements in order for Subscriber to obtain EAP services. "*Fraud*" also includes any act that constitutes fraud under applicable federal or state law. Cancellation is effective immediately on the date the Subscriber or Enrollee, as applicable, receives notice of cancellation.

31.3 **Review by Department of Managed Health Care:** If Subscriber alleges that its contract for EAP services has been cancelled or not renewed because of the requirements for health care services, the Subscriber may request a review by the Director of the Department of Managed Health Care. If the Department determines that a proper complaint exists under the provisions of this section, the

Director shall notify the Plan. Within 15 days after receipt of such notice, the Plan shall either request a hearing or reinstate the Subscriber.

- 31.4 No additional eligible Enrollees will be referred or accepted for EAP services after the date of termination of this contract.
- 31.5 The Plan does not engage in retroactive termination, and Enrollees covered under this Subscriber Contract will not be held retroactively responsible for any services provided to them by the Plan. Subscriber holds full accountability for payment of services rendered to its Enrollees under this contract.
- 32.0 Upon termination of a Provider contract, the Plan will pay the Provider to complete all Sessions remaining for Sessions in progress, unless the Plan makes other arrangements for Provider services. In either case no costs will be incurred by Subscriber or any Enrollee due to this event. The Plan will provide sixty (60) days written notice to Enrollee/Subscriber of any termination or breach of contract by, or inability to perform of, any contracting Provider if Enrollee/Subscriber may be materially and adversely affected thereby.
- 33.0 No increase in cost or change in Benefits will be proposed by the Plan without providing 30 days advanced written notice to Subscriber.
- 34.0 The "800" telephone number for use by Enrollees for filing complaints and Grievances is 1-800-367-7474.
- 35.0 No Enrollee shall be liable for any payments due from The Plan to Providers if the Plan fails to pay said Providers.
- 36.0 Subscriber has the responsibility to notify the Plan if EAP services are to be included in Subscriber's benefit plans subject to COBRA.
- 37.0 All notices by either party shall be to the addresses indicated below (or such other addresses as the parties may designate).
- 38.0 No waiver, modification, or amendment of this Subscriber Contract is valid unless in writing and duly executed by both parties.
- 39.0 This Subscriber Contract is to be interpreted under the laws of the State of California, and is intended to be consistent with the requirements of the Knox-Keene Health Care Service Plan Act of 1975 (as amended on January 1, 2000). The provisions of said Act will bind the parties regardless of any contrary wording in this Subscriber Contract.

40.0 Notices:

To **Subscriber:**

To The Plan:

EMPATHIA PACIFIC, INC.
5234 Chesebro Road, Suite 201
Agoura Hills, California 91301

41.0 Binding Arbitration

All disputes under this Subscriber Contract that cannot be resolved informally must be submitted to binding arbitration under the commercial rules of the American Arbitration Association (“AAA”). By signing this contract you are agreeing that all disputes arising under this Subscriber Contract, including cases of alleged medical malpractice, will be resolved through neutral arbitration and that neither the Subscriber nor Enrollees will retain any right to a trial by jury or a court trial in the case.

For those disputes for which the total amount of damages claimed is \$200,000 or less, the parties to the dispute shall select a single arbitrator who shall have no jurisdiction to award more than \$200,000.

The arbitration shall take place in California and judgment upon any award rendered by the arbitrator may be duly entered in any court in the State of California, having jurisdiction thereof. The prevailing party shall be entitled to court costs and reasonable attorney’s fees.

In case of financial hardship, the AAA may determine that the Subscriber or the Enrollee may not be required to pay for the administrative costs of arbitration. The Plan will provide the Subscriber and Enrollees, upon request, with an application for relief under this requirement. If the AAA does not grant such a request, the Plan shall, in cases of extreme hardship, assume all or a part of the Subscriber’s or Enrollee’s share of those administrative costs.

Executed on the _____ day of _____, in Agoura Hills, California

EMPATHIA PACIFIC, INC.

By: **Barbara Weir**
Title: **Chief Executive Officer**

Executed on the _____ day of _____, in _____,

By:
Title:

EMPATHIA

Employee Assistance Program (EAP)

Combined Evidence of Coverage and Disclosure Form

(EXHIBIT A OF SPECIALIZED HEALTH CARE SERVICE PLAN CONTRACT)

PLEASE READ THE FOLLOWING INFORMATION
SO YOU WILL KNOW FROM WHOM
YOUR EAP SERVICES MAY BE OBTAINED

Your employer has chosen Empathia Pacific, Inc. (Empathia) to provide Employee Assistance Program [EAP] services. All EAP services covered under this Plan will be provided by Empathia EAP Providers.

Empathia Pacific, Inc. is a private national firm specializing in employee assistance programs. Empathia is not an insurance company.

This Evidence of Coverage and Disclosure Form constitute only a summary of your plan Benefits. The Empathia Employee Assistance Program Subscriber Contract (the contract between your Employer and Empathia) must be consulted to determine the exact terms and conditions of coverage.

Any questions? Call our Member Services Department at 800-367-7474

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**COMBINED EVIDENCE OF COVERAGE
AND DISCLOSURE FORM**

**WELCOME TO EMPATHIA PACIFIC, INC.
EMPLOYEE ASSISTANCE PROGRAM**

Your employer has chosen Empathia Pacific, Inc. (Empathia) to provide Employee Assistance Program [EAP] services for you, your dependents and other members living in your home. Empathia Employee Assistance Program (the "Plan") is a specialized health care service plan licensed in California under the Knox Keene Act. This brochure is your COMBINED EVIDENCE OF COVERAGE AND DISCLOSURE FORM. Your employer has entered into a contract with the Plan.

This Combined Evidence of Coverage and Disclosure Form provides you with important information on how to obtain Covered Services and the circumstances under which Benefits will be provided to you. **PLEASE READ IT CAREFULLY.**

Keep this publication in a safe place where you can easily refer to it when you are in need of Covered Services.

**Empathia Pacific, Inc.
Employee Assistance Program
5234 Chesebro Road, Suite 201
Agoura Hills, CA 91301
(800) 367-7474**

Web site: www.mylifematters.com

**INTRODUCTION TO
EMPATHIA PACIFIC, INC.
EMPLOYEE ASSISTANCE PROGRAM**

Empathia Pacific, Inc. (Empathia) - Employee Assistance Program is a Specialized California Health Care Service Plan headquartered in Agoura Hills, California.

When you receive Covered Services from an EAP Provider, you will not be responsible for paying any Co-Payment. You will not make Premium payments; your employer makes Premium payments on your behalf.

If you wish to know more information about any of the issues covered in this Combined Evidence of Coverage/Disclosure Form, you may request additional information from the Plan. Also if you have any questions or concerns about Empathia Employee Assistance Program, call our Member Services Department at the telephone number provided below. Our Member Services Officer will be happy to assist you.

The Plan, operating as a specialized health care service plan, will provide you an appropriately qualified and licensed behavioral health care Provider, acting within the scope of EAP practice, and who possesses a clinical background, including training and expertise related to the delivery of employee assistance program services.

**Empathia Pacific, Inc.
Employee Assistance Program
Member Services Department
5234 Chesebro Road, Suite 201
Agoura Hills, CA 91301**

Telephone: (800) 367-7474

IMPORTANT TERMS

The following definitions apply to this Combined Evidence of Coverage and Disclosure Form:

BENEFITS means those Covered Services an Enrollee is entitled to receive under the applicable Empathia Pacific, Inc. Specialized Health Care Service Plan Contract.

BENEFIT PERIOD means a period identified by the Specialized Health Care Service Plan Contract (usually twelve months), which serves to limit your Covered Services for that period of time.

COBRA means Consolidated Omnibus Budget Reconciliation Act of 1985 for continued access to health insurance coverage to be provided to Enrollees, and their dependents, of Subscribers with 20 or more eligible Enrollees.

COMBINED EVIDENCE OF COVERAGE/DISCLOSURE FORM (EOC/DF) means the certificate, agreement, contract, brochure, or letter of entitlement issued to a Subscriber/Enrollee setting forth the coverage to which the Subscriber or Enrollee is entitled.

COMMUNITY SERVICES are defined as qualified long-term behavioral health and/or chemical dependency treatment resources. Community Services are not included under this specialized health care plan.

CO-PAYMENT means the amount, if any specified herein, which represents the Enrollee's portion of the cost of Covered Services. There are no Co-Payments required of any Enrollee.

COVERED SERVICES means those services an Enrollee is entitled to receive under the Plan.

CRISIS INTERVENTION means the process of responding to a request for immediate services in order to determine whether or not a medical-psychiatric emergency or urgent situation exists and to otherwise assess the needs for short term counseling, referrals to community resources and/or referrals to medical psychiatric services.

EFFECTIVE DATE means the actual calendar date when your Specialized Health Care Service Plan Contract becomes effective. This date is found on Page 1, line 1 of the Subscriber Contract.

EMERGENCY MEDICAL CONDITION means a medical condition manifesting itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

EMERGENCY SERVICES includes medical screening, examination and evaluation by a physician, or other appropriate Providers under the supervision of a physician to determine if an Emergency Medical Condition exists, and if it does, the care, treatments, and surgery by a physician necessary to relieve or eliminate the Emergency Medical Condition. Emergency Services also include screening examination and evaluation by an MD psychiatrist, physician or other applicable Providers within the scope of their licenses to determine if a psychiatric medical

condition exists and the care and treatment necessary to relieve or eliminate the psychiatric Emergency Medical Condition.

ENROLLEE means an employee of the Subscriber organization, their eligible dependents and significant others who are permanent residents of the Enrollee's household are eligible for services under the Plan. Any minor child or spouse/former spouse who does not permanently reside with the Enrollee and is ordered by the court that coverage be provided, is also eligible under the Plan.

EMPLOYER means an organization that has contracted with the Plan to provide employee assistance services to its eligible employees and who is responsible for payment to The Plan.

EXCLUSIONS mean services that are not covered under the Plan.

FRAUD means the deliberate submission of false information by a Provider, Subscriber, Plan Enrollee, Plan employee or other individual or entity, to gain an undeserved payment on a claim or false information relating to the number of Enrollees covered under the Subscriber Contract with the Plan or false information relating to making formal management referrals or deceptive practices that violate the confidentiality of the Enrollee and demands for confidential Enrollee information that would violate federal and state law governing confidentiality and professional codes of ethics for employee assistance program services Providers, and mental health professionals.

GRIEVANCE means a written or oral expression of dissatisfaction regarding the Plan and/or a Provider, including quality of care concerns, and shall include a complaint, dispute, request for reconsideration or appeal made by an Enrollee or the Enrollee's representative. Where the Plan is unable to distinguish between a Grievance and an inquiry, it shall be considered a Grievance.

LIMITATION means the maximum number of EAP counseling sessions an Enrollee is eligible to receive under the Subscriber Contract for each problem.

PREMIUM means the sum of money paid monthly to the Plan that entitles the Enrollee to receive the Covered Services provided by the Plan (Empathia Employee Assistance Program) as outlined in this Evidence of Coverage and Disclosure Form.

PROVIDER means a clinical psychologist (PhD), licensed clinical social worker (LCSW), marriage family and child therapist (MFT), or certified addictions counselor (CAC) who provides EAP assessment, referral and short-term counseling services to Enrollees under the Plan.

SESSION means an outpatient visit with a Provider conducted on an individual basis during which counseling services are delivered.

SPECIALIZED HEALTH CARE SERVICE PLAN CONTRACT means a contract for health care services in a single specialized area of health care, for Subscribers or Enrollees, or which pays for or which reimburses any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the Subscribers or Enrollees.

SUBSCRIBER means the entity that is responsible for payment to the Plan. The employer organization contracting with the Plan for EAP services is responsible for payment to the Plan.

OBTAINING YOUR EAP BENEFITS

Please read the remainder of this Combined Evidence of Coverage and Disclosure Form to fully understand how to use your Empathia Employee Assistance Program Benefits. Here are the basics:

- For confidential assistance, call the toll free EAP Help Line number 24 hours a day.
- An EAP Help Line professional will take your information, assess your situation, and use that information to find the appropriate Provider in the area close to your home or work, as you prefer it.
- The information is given to the Provider who then gives you a call to set up an in-person appointment at the Provider's office.
- On the initial appointment, an assessment is made to determine if short-term counseling is appropriate or if a referral to Community Services is needed to resolve your situation/problem.
- The EAP Provider must consult with the Plan's Clinical Director or Assistant Clinical Director who will review each request for Sessions beyond the assessment to ensure the assessment clearly indicates that short-term counseling is clinically appropriate to assist the Enrollee in resolving their issues. Any request that is clinically appropriate for short-term treatment will be approved up to the maximum number of Sessions contracted for in the EAP plan model the Subscriber has contracted for

Such approvals or denials will be given to the EAP Provider within forty-eight (48) hours, or two (2) business days. If the assessment does not indicate that short-term treatment is appropriate, the request will be denied and the Clinical Director or Assistant Clinical Director will provide the basis of denial both telephonically and in writing, and will assist the Provider as necessary to provide the Enrollee an appropriate referral beyond EAP for counseling or treatment.

PRINCIPAL BENEFITS AND COVERAGE

This section summarizes the Covered Services provided to Enrollees, their dependents and household members.

The services offered by the EAP include problem assessment, short-term counseling, referral and follow-up. Formal medical diagnoses or on-going treatment services are not provided. The EAP services provided to you may include referring you to independent resources for on-going assistance. If a referral is made, the EAP will usually provide two or three resource options; the final choice will be your responsibility. These referrals are made in consideration of our assessment of your needs. The EAP receives no reimbursement from any referral source.

If a referral for on-going treatment services is required, your EAP Provider will consider your insurance Benefits and ability to pay, and will discuss these matters with you. However, you are responsible for final verification of insurance coverage and any Co-Payments or charges not covered by your insurance. The Plan provides clinical assessment, short-term counseling and referral for a variety of problems including, but not limited to.

- o Marital or Relationship Difficulties
- o Family and Child Problems
- o Stress/Anxiety
- o Depression
- o Grief and Loss
- o Substance Abuse
- o Domestic Violence
- o Job Performance Issues
- o Crisis Intervention
- o Communication and/or Conflict Issues
- o Weight and eating disorders

Referrals are provided to Enrollee to community resources for any ongoing assistance in these areas. Services by a community resource are not Covered Services.

When the Plan refers an Enrollee to community resources for assistance for non-Covered Services, the Enrollee is responsible for payment of costs and fees for services provided by community resources that are not contracted Providers.

Limitation

Enrollees may receive up to
Subscriber Contract.

EAP counseling sessions for each problem specified in the

Choice of Providers

These services to Enrollees are based in EAP core technology as defined by the U. S. Department of Health and Human Services and the International Employee Assistance Professionals Association, regardless of the educational background and licensure level of the Provider. Listed services are provided through Providers who have agreed to enter into a written contract with Empathia Pacific, Inc.

- (a) All contracting Providers are appropriately licensed and/or certified qualified clinical professionals who function as EAP counselors within the scope of employee assistance services and shall comply with professionally recognized standards of practice and all applicable state and federal laws.
- (b) EAP Providers may be licensed as Marriage Family and Child Therapists (MFT), Licensed Clinical Social Workers (LCSW), Clinical Psychologists (PhD), and Certified Addictions Counselors (CAC). All perform EAP counseling within the defined scope of EAP services.

A list of contracting providers within the Enrollee's general geographic area is available upon request.

The Plan will provide EAP services to Subscriber's employees, hereafter referred to as eligible Enrollees, at times and locations(s) agreed to and arranged by the Plan and Enrollee.

You may request a different EAP Provider for assessment and referral and/or short-term counseling for second opinion at no cost to you, by contacting the Member Services Officer at 800/367-7474. Requests for a second opinion by an Enrollee will be authorized or denied in a timely manner, appropriate to the nature of the Enrollee's condition, and will be provided in a time period not to exceed 72 hours after the Plan's receipt of the request. The second opinion will be given by a licensed health care Provider who is acting within his/her scope of practice, and who possess a clinical background related to the condition associated with the Enrollees request. This second opinion will be given, without cost to the Enrollee.

Continuity of Care

- Terminated Providers

Should the Subscriber, Provider, or the Plan terminate its contract, the Plan will provide Enrollees continuity of care for assessment and referral, or short-term counseling services. The Plan will complete all assessment and referral services and/or remaining short-term counseling which have been started prior to the date of termination and that are clinically appropriate. The Plan will provide you sixty (60) days written notice of termination of any contracting EAP Provider if you may, or would, be materially and adversely affected by such termination.

- New Employee

The Plan will allow any new Enrollee involved in a current episode of short-term counseling with a prior employee assistance program (EAP) service Provider, at the time their employer terminated the prior EAP contract, to continue in short-term counseling with that Provider under the former plan, up to the limits of the number of short-term counseling Sessions to be provided by the Plan under the new Subscriber Contract. The Plan will not attempt to offer continuity of care beyond the scope of employee assistance services and its licensed capabilities.

Facilities

Enrollees may obtain a list of EAP Providers in their geographic area by calling the Plan at 1-800-367-7474, or by submitting a request to the Plan. All requests for services must be coordinated by contacting the Plan through the 24 hours/day, 7 days/week toll-free EAP Help Line at 1-800-367-7474.

Obtaining Emergency Services

In the event that an Enrollee is having or believes that he/she is having a medical or psychological emergency, the Enrollee or dependent should call 911 or go to the nearest hospital emergency room. Medical/psychiatric emergencies and services for medical emergency or other medical/psychiatric care are not Covered Services and will not be paid by the EAP.

Enrollees are encouraged to use appropriately the "911" emergency response system, in areas where the system is established and operating, when they have, or believe they have, an emergency psychiatric or medical condition that requires an emergency response.

Crisis Intervention

Your EAP provides 24-hour telephone Crisis Intervention. The EAP will determine whether or not to provide appropriate intervention, as well as assess the need for short-term counseling, referrals to community resources or referrals for emergency behavioral care and treatment.

Where there is no Crisis, but the Enrollee or dependent has an urgent need to see a Provider within 48 hours to address a serious problem or condition, the EAP will schedule the Enrollee with a Provider who will offer an appointment within this time frame.

EXCLUSIONS

The following services are specifically excluded:

- All services other than the Employee Assistance Plan services covered on page 6.

The following services are specifically excluded from Covered Services:

- (a) Aversion Therapy
- (b) Biofeedback and hypnotherapy
- (c) Court-ordered services required as a condition of parole or probation
- (d) Services for remedial education including evaluation or treatment of learning disabilities or minimal brain dysfunction; developmental and learning disorders; behavioral training; or cognitive rehabilitation
- (e) Treatment or diagnostic testing related to learning disabilities, developmental delays, or educational testing or training
- (f) Services received from a non-contracting Provider, unless The Plan provides prior approval
- (g) Psychological testing
- (h) Examinations and diagnostic services in connection with the following: obtaining or continuing employment; obtaining or maintaining any license issued by a municipality, state or federal government; securing insurance coverage; foreign travel or school admissions
- (i) Services of a psychiatrist (M.D.), including medication management or medication consultation
- (j) Prescription drugs
- (k) Inpatient, Outpatient, or Residential services for behavioral health or substance abuse treatment
- (l) Services for which the Subscriber promotes use through monetary or other material incentives or rewards offered or provided to Enrollees who use or are encouraged to use such services.

ELIGIBILITY, ENROLLMENT, EFFECTIVE DATE AND RENEWAL PROVISIONS

Eligibility

To be eligible for services under the Plan, your employer must have executed a Specialized Health Care Service Plan Contract (“Subscriber Contract”) with Empathia Employee Assistance Program.

Your employer makes the determination of who is eligible to participate and who actually participates in the Plan. Disputes or inquiries regarding eligibility, including rights regarding renewal, reinstatement and the like may be referred by Empathia Employee Assistance Program to your employer for determination.

If an Enrollee is terminated from employment and he or she returns to active employment with Subscriber, such Enrollee and his or her eligible dependents may again become eligible.

Dependent coverage is included in the Plan. Dependent is defined as follows:

1. The lawful spouse of the Enrollee. All newborn infants whose eligibility begins from and after the moment of birth. Adopted children, stepchildren, and foster children are eligible from and after the date of placement. Except as stated above, dependents are eligible for coverage on the date the Enrollee is eligible for coverage or on the day the Enrollee acquires such dependent.
2. An Enrollee's dependent, up to age twenty-six (26), irrespective of the dependent's place of residence, marital, financial, or student status.
3. Coverage will not terminate while a dependent child is and continues to be (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap; and (2) chiefly dependent upon the Enrollee for support and maintenance provided the Enrollee furnishes proof of such incapacity and dependency to Empathia Pacific, Inc., Employee Assistance Program within thirty (30) days of the child attaining the limiting age set forth in paragraph 2 above, and every two (2) years thereafter, if requested by the Plan.
4. In addition to the above, all permanent residents of the Enrollee's household are eligible for Covered Services under the Plan. Any spouse/former spouse who does not permanently reside with the Enrollee and is ordered by the court that coverage be provided is also eligible.

Enrollment

As an employee of your company, you and all persons who reside with you on a non-commercial basis are automatically eligible for coverage in the Empathia Employee Assistance Program. Any minor child or spouse/former spouse who does not permanently reside with you and is ordered by the court that coverage be provided is also eligible for services.

Effective Date of Coverage

The beginning of eligibility coverage is determined by the effective date of the Specialized Health Care Service Plan Contract. From that date forward, you must receive all EAP services through the Empathia Employee Assistance Program in order to maximize your Benefits.

Renewal Provisions

The Plan shall have a term of _____ months and shall automatically renew on the same terms and conditions for annual periods of 12 months at the end of the initial term and each renewal term unless either the Plan or Subscriber gives the other notice of termination not less than ninety (90) days before the end thereof. An addendum to the Subscriber Contract will be mailed to the employer if a change is approved.

CONFIDENTIALITY AND RELEASE OF INFORMATION

The Plan will maintain the confidentiality of all Enrollee EAP records except to the extent that disclosure is authorized by the Enrollee in writing, or is otherwise mandated by federal and state law. All EAP case records are maintained in compliance with all federal and state laws protecting the confidentiality and security of EAP records. The Plan maintains a comprehensive standard procedure on the confidentiality of case records that prescribes how Enrollee case records are to be maintained.

The Plan's procedures are also fully compliant with the Federal Health Insurance Portability & Accountability Act [HIPAA] that became effective April 14, 2003.

The Plan's Notice of Privacy Practices, which describes the Plan's policies and procedures for preserving the confidentiality of medical records, will be offered to each enrollee during the EAP intake call or counseling appointment. Members may request a paper copy of this Notice at any time by contacting the Plan at 1-800-367-7474. The Plan's Notice of Privacy Practices is also available on the Plan's member website at mylifematters.com

ANTI-DISCRIMINATION NOTICE

The Plan will never refuse to (i) enter into any Subscriber Contract, cancel or decline to renew or reinstate any Subscriber Contract, or (ii) enroll any person or accept any person as a Enrollee or renew any person as a Enrollee on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, or disability of any contracting party, prospective contracting party, or person reasonably expected to benefit from that contract as a Subscriber, Enrollee, member, or otherwise.

ANTI-FRAUD PLAN

The Plan has established an Anti-Fraud Plan to identify and reduce the risk and potential costs to the Plan, and to protect its EAP Providers, Subscribers, and their Enrollees, in the delivery of employee assistance services through the timely detection, investigation and prosecution of suspected fraudulent activities

Subscribers and their Enrollees should file a report of suspected or alleged fraudulent activities to the Plan. This filing of any report will be treated confidentially and should be filed with the Plan's Chief Executive Officer, who can be contacted by mail at 5234 Chesebro Road, Suite 201, Agoura Hills, California 91301 or by telephone at 1-818-707-0544 or by fax at 1-818-707-0496.

Any report of suspected or alleged fraudulent activities will be immediately investigated according to the Plan's published Anti-Fraud Plan S-00-08. Copies of the Anti-Fraud Plan are available upon request through the address and contact numbers listed above.

ORGAN DONATION

Organ Donation Notice: There is a need for organ donors across the country. You can agree to have your organs donated in the event of your death. If you wish to become an organ donor or tissue donor, tell your family members that you have decided to become an organ and tissue donor so they will understand your wishes and support them. Have a frank discussion about the steps they will need to take at the time of your death to ensure your donations take place in the proper time frame. If you wish to become an organ and tissue donor, the California Department of Motor Vehicles (DMV) can give you a donor card that you carry with your driver's license or I.D. card, and a donor sticker to place on the front of your driver's license or I.D. card and carry it in your wallet or purse at all times. Have two people witness your signature, preferably family members. For more information you can contact the National Transplant Society/National Donor Registry on-line at www.organdonor.org, or by contacting U. S. Department of Health and Human Services website at www.organdonor.gov.

TERMINATION OF BENEFITS

In most cases, your coverage will end when the Plan's contract with your employer [Subscriber] terminates. There are also some circumstances when your coverage may end even though the Plan's contract with your employer remains in effect, for example, when you are no longer eligible to receive EAP Benefits as an Enrollee [employee or family member], or the Plan no longer wants to provide services to you because of your conduct as described below.

Your coverage cannot be cancelled because of your health status or your use of EAP services. If you believe this has happened you may send us a written complaint to the attention of the Member Services Officer as described in the "Compliant, Grievance and Appeals Procedure" section of this Evidence of Coverage / Disclosure Form, or on-line at www.mylifematters.com, or by calling **1-800-367-7474**, asking to speak with the Member Services Officer. You may also request a review by the Director of the California Department of Managed Health Care.

- ***Termination by your employer [Subscriber]*** - Subscriber shall have the option to terminate this contract upon sixty (60) days written notice to the Plan, which notice shall specify concerns and/or complaints expressed by employees or Enrollees regarding use of the services, and which concerns and/or complaints shall not be resolved by the Plan to Subscriber's satisfaction during such sixty day notice period.
- ***Termination by the Plan of contract with Subscriber for non-payment*** – If your employer (Subscriber) fails to pay our fees, the Plan may terminate the Subscriber Contract for nonpayment. The Plan will first give your employer not less than thirty (30) days notice of our intent to terminate the Subscriber Contract for nonpayment. If payment is not received within those thirty (30) days, we will terminate the contract; wherein your employer will furnish you notice of the termination. Your coverage will terminate fifteen (15) days after your employer provides notice to you.
- ***Termination of coverage based on your conduct*** – The Plan reserves the right to cancel your coverage for Fraud or deception in the use of EAP services. "***Fraud***" means knowingly making, or causing, or permitting to be caused false statements in order for you or another person to obtain EAP services to which you or the other person is not entitled. "Fraud" also includes any act that constitutes Fraud under applicable federal or state law. Cancellation is effective immediately on the date you receive notice of cancellation.
- The Plan also reserves the right to cancel your coverage based on your conduct, if you threaten the safety of Plan employees, its EAP Providers, or others eligible for or receiving EAP services, of if your repeated behavior has substantially interfered with the Plan's, or its EAP Provider's ability to furnish or arrange services for you or others. Termination is effective fifteen (15) days after notice is sent to you.

- **Review by Department of Managed Health Care** – If Subscriber alleges that its contract for EAP services has been cancelled or not renewed because of the requirements for health care services, the Subscriber may request a review by the Director of the Department of Managed Health Care. If the Department of Managed Health Care determines that a proper complaint exists under the provisions of this section, the Director shall notify the Plan. Within 15 days after receipt of such notice, The Plan shall either request a hearing or reinstate the Subscriber.

The Plan does not engage in retroactive termination, and as an Enrollee [employee or eligible family member] under your employer's Subscriber Contract, you will not be held retroactively responsible for any services provided to you by the Plan.

INDIVIDUAL CONTINUATION OF BENEFITS

Electing COBRA Coverage

Your employer is responsible for providing you notice of your right to receive continuing coverage under COBRA. Your employer is responsible for notifying the Plan of the duration of your eligibility.

If you terminate your employment with the Subscriber, you may elect to continue your EAP benefit through your employer under COBRA. If you elect to continue this benefit, you are eligible for all EAP services covered under the Subscriber Contract up to the limits of the Plan.

You must notify your employer that you elect to continue the EAP benefit. Your employer will include your name on a list of employees who have selected the EAP benefit under COBRA, and will provide the Plan this updated list on a regular basis. You will not be responsible for filing a claim for EAP services under COBRA, as these services will continue to be paid by your former employer.

LIABILITY OF SUBSCRIBER OR ENROLLEE FOR PAYMENT

Co-Payment

There are no Co-Payments. All Covered Services are paid for by the Plan.

Prepayment of Fees

Your employer is paying the monthly Premium for your EAP services. Neither you nor your dependents and other members of your household have any responsibility for payment of any Premiums or Co-Payments for EAP services provided to you under the Plan.

There are no restrictions on assignment of Benefits payable to the Enrollee by the Plan.

Reimbursement Provisions

All EAP services are 100% paid for by your employer under the Subscriber Contract it maintains with the Plan. Under the terms of the Subscriber Contract, Enrollees are required to access all EAP services through the Plan's nationwide toll free EAP HelpLine, 1-800-367-7474, available to Enrollees 24 hours/day, 7 days/week.

In the rare case that an Enrollee might have to access EAP services through a Provider who is not contracted with the Plan due to the Plan's inability to offer the Enrollee access to a contracted Provider within the accessibility and time limits specified in the Plan's standards of accessibility, the Enrollee can request reimbursement from the Plan for any out-of-pocket payment for services incurred. Any such claim for reimbursement should be submitted to the Plan, Attention: Member Services Officer, at 5234 Chesebro Road, Suite 201, Agoura Hills, California 91301. Claims can also be submitted via fax at (818) 707-0496, Attention: Member Services Officer.

The Plan will evaluate the claim for reimbursement and notify the Enrollee within 15 days of the receipt of the claim of the approval or denial of the claim. If the claim is denied, the Plan will, during the same 15-day period, provide the Enrollee with information about the basis for denial and how to appeal the decision. If the claim for reimbursement is approved, payment will be made within 30 days from the date of receipt of the request for reimbursement.

This provision does not alter the Enrollee's requirement to access EAP services through the Plan's nationwide toll free EAP HelpLine, 1-800-367-7474, available to Enrollees 24 hours/day, 7 days/week.

Liability for Sums Owed by Empathia Pacific, Inc. Employee Assistance Program

California law requires that every contract between a Plan and a Provider must contain a provision that prohibits the Plan from holding you financially responsible for sums owed to a Provider by the Plan. Therefore, in the event the Plan fails to pay a Provider for Covered Services, you will not be liable to that Provider for the amount owed by the Plan.

How Empathia Pacific, Inc. Compensates EAP Providers

The Plan will pay each of the contracting EAP Providers directly for Covered Services on a negotiated fee-for-service basis.

Empathia Employee Assistance Program does not pay financial bonuses or other incentives to Plan Providers. Should you wish to know more about these issues, please contact our Member Services Department at 1-800-367-7474.

Providers are allowed to self-refer for continuing services beyond the scope of EAP services in specific situations in which the clinical need is best served by the Member remaining with the Provider for ongoing treatment services. In such cases, the Member will be asked to sign a Freedom of Choice Affidavit, which clarifies that the Member has been offered at least two alternative treatment resources and chooses to enter into a direct payment agreement with the Provider and that these treatment services are not covered under the Plan's EAP.

COMPLAINT, GRIEVANCE AND APPEALS PROCEDURES

Complaint/Grievance Process

Empathia Employee Assistance Program has established a Grievance process for receiving and resolving Enrollee complaints or Grievances with Empathia Employee Assistance Program and its contracted EAP Providers. If you should have any problem with services delivered through Empathia, the Empathia Member Services Department should be able to assist you and resolve those problems.

A Member Services Officer reviews any complaint involving care that has been received or denied. In the case of a denial, the reviewer will not have been involved in the initial denial of services.

The Member Services Officer will advise the Enrollee that the Plan will acknowledge in writing receipt of the Grievance within five (5) calendar days and will provide written resolution of the Grievance within (30) calendar days of receipt.

If a Grievance requires urgent attention, the Plan shall expedite its review of the Grievance to be resolved no less than three calendar days of receipt of Grievance.

You may file a complaint by phone, in writing, or online @ www.mylifematters.com. Our toll-free number is 1-800-367-7474. Please ask to speak to the Member Services Officer, or address your correspondence to:

Empathia Pacific, Inc.
Employee Assistance Program
Attention: Member Services Officer
5234 Chesebro Road, Suite 201
Agoura Hills, CA 91301

Neither the Plan nor any of its participating providers will discriminate against an Enrollee based on the filing of a Grievance. If you believe that you have been discriminated against due to your filing a Grievance, please call 1-800-367-7474 and ask to speak to the Member Services Officer.

Binding Arbitration

All disputes that may arise between an Enrollee and the Plan, if they cannot be resolved informally **shall be resolved by arbitration under the commercial rules of the American Arbitration Association (“AAA”)** Therefore, any dispute, including any dispute as to medical malpractice, that is as to whether any medical or other services rendered under this contract were unnecessary or unauthorized or were improperly, negligently or incompletely rendered, will be determined by submission to arbitration, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. Enrollees, by accepting Covered Services, give up their constitutional right to have any such dispute decided in a court of law before a jury, and instead accept the use of arbitration.

For those disputes for which the total amount of damages claimed is \$200,000 or less, the parties shall select a single arbitrator who shall have no jurisdiction to award more than \$200,000. The arbitration shall take place in California and judgment upon any award rendered by the arbitrator may be duly entered in any court in the State of California, having jurisdiction thereof. The prevailing party shall be entitled to court costs and reasonable attorney's fees.

In case of financial hardship, the AAA may determine that you are not required to pay for the administrative costs of arbitration. The Plan will, upon request, provide you an application for relief from this requirement. If the AAA does not grant your request, the Plan shall, in cases of extreme hardship, assume all or part of your share of these administrative costs.

Review by the Department of Managed Health Care

The California Department of Managed Health Care is responsible for regulating health care service plans. If you have a Grievance against your health plan, you should first telephone your Plan at **1-800-367-7474** and use The Plan's Grievance process before contacting the Health Plan Division for assistance. The Member Services Department is available to assist Enrollees with any complaints and Grievances. Utilizing this Grievance procedure does not prohibit any potential legal rights or remedies that may be available to you. If you need help with a Grievance involving an emergency, a Grievance that has not been satisfactorily resolved by your health plan, or a Grievance that has remained unresolved for more than 30 days, you may call the department for assistance. You may also be eligible for an Independent Medical Review (IMR). If you are eligible for IMR, the IMR process will provide an impartial review of medical decisions made by a health plan related to the medical necessity of a proposed service or treatment, coverage decisions for treatments that are experimental or investigational in nature and payment disputes for emergency or urgent medical services.

The department also has a toll-free telephone number (**1-888-466-2219**) and a TDD line (**1-877-688-9891**) for the hearing and speech impaired. The department's Internet Web site <http://www.hmohelp.ca.gov> has complaint forms, IMR application forms and instructions online.

Public Policy Committee

The Plan has established a Public Policy Committee, with the majority of the committee members being from Subscriber groups who contract for the Plan's EAP services.

This committee meets at least quarterly and assists the Plan in establishing its public policy relating to services provided by the Plan, its Enrollees and contract Providers, to assure the comfort, dignity, and convenience of Enrollees seeking EAP services for themselves, their families and the public.

If you are interested in more information, please call us at 818/707-0544.