



II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures					
Operating Costs	(388,913)				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>					
# ADDITIONAL FTE POSITIONS (Cumulative)	(388,913)	-0-	-0-	-0-	-0-

Is Item Included in Current Budget? Yes X No    

Budget Account No.: Fund\_1300\_ Dept\_440\_ Unit 4230 Object 3103

B. Recommended Sources of Funds/Summary of Fiscal Impact:

The approval of this Agreement will shift the funding obligation for Fire Department Physician, annual medical physicals, drug testing and related services from the County to the Fund. The early termination of the existing Professional Services Agreement with Hope Health & Wellness, Inc., will result in a savings of \$388,913 to the Main Fire/Rescue MSTU for FY13.

C. Departmental Fiscal Review: *[Signature]*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

*[Signature]* 7/17/2013  
OFMB

*[Signature]* 7/19/13  
Contract Dev. and Control  
7-18 '13 *[Signature]*

B. Legal Sufficiency:

*[Signature]* 7/22/13  
Assistant County Attorney

C. Purchasing Department Review:

*[Signature]*  
Kathleen M. Scarlett, Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.



**Purchasing Department**

50 South Military Trail, Suite 110  
West Palm Beach, FL 33415-3199  
(561) 616-6800  
FAX (561) 616-6811  
www.pbcgov.com/purchasing



**Palm Beach County  
Board of County  
Commissioners**

- Steven L. Abrams, Chairman
- Priscilla A. Taylor, Vice Chair
- Hal R. Valeche
- Paulette Burdick
- Shelley Vana
- Mary Lou Berger
- Jess R. Santamaria

**County Administrator**

Robert Weisman

December 11, 2012

VIA FEDEX (561) 686-0120  
VIA FAX: (561) 686-8073

Dr. Andrew P. Hope, D.C.  
Hope Health & Wellness, Inc.  
655 North Military Trail  
West Palm Beach, FL 33415

RE: Professional Services Agreement between Palm Beach County  
and Hope Health and Wellness, Inc.

Dear Dr. Hope:

By this letter and effective January 11, 2013, Palm Beach County ("County") is terminating Agreement R2009-0127 dated January 13, 2009, as amended by R2010-1064 dated June 29, 2010, and R2011-1414 dated September 13, 2011, and R2012-1429 dated October 2, 2012 ("Agreement, as amended") without cause in accordance with Article 7 of the Agreement, as amended.

As a result of Collective Bargaining Agreement negotiations between the County and the Firefighters Union, it is the intent of the County that the annual medical physicals for our firefighters be entirely paid by and provided through the Firefighters Insurance Fund. Please know that it has been a pleasure working with Hope Health and Wellness, Inc.

We look forward to the possibility of working with you in the future.

Sincerely,

Kathleen M. Scarlett, Esquire  
Director

cc: Steve Jerauld, Fire Chief  
Sharon Burrows, Assistant County Attorney  
Dawn Wynn, Assistant County Attorney  
Michelle Liska, Financial Analyst III, Fire Rescue  
Lauren Kurth, Wellness Coordinator, Fire Rescue

"An Equal Opportunity  
Affirmative Action Employer"

**Professional Services Agreement Between Palm Beach County and  
Palm Beach County Firefighters Employee Benefits Fund**

This Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between Palm Beach County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the COUNTY, by and through its Board of County Commissioners, and Palm Beach County Firefighters Employee Benefits Fund, a trust first effective on October 10, 1984 and lastly restated by agreement and declaration of trust effective March 1, 2012, hereinafter referred to as the PROVIDER, whose federal I.D. is 59-2477751.

**Whereas**, the Palm Beach County Fire-Rescue Wellness Program was established pursuant to Article 45 of the Collective Bargaining Agreement between Palm Beach County and the Professional Firefighters/Paramedics of Palm Beach County, Local 2928, IAFF, Inc.; and

**Whereas**, the Collective Bargaining Agreement established a Wellness Steering Committee within the Palm Beach County Fire-Rescue Department, comprised of staff appointed by the Fire-Rescue Administrator and Local 2928, to direct, establish guidelines, make recommendations and evaluate the Fire-Rescue Wellness Program; and

**Whereas**, the Collective Bargaining Agreement provides that Palm Beach County Fire-Rescue shall maintain responsibility to administer the Wellness Program and shall designate a Wellness Coordinator to assume responsibility for the daily operation and management of the Wellness Program; and

**Whereas**, the components of the Fire-Rescue Wellness Program established by Article 45 of the Collective Bargaining Agreement include the provision of a Fire Department Physician, the administering of medical physical examinations, and drug testing for Fire-Rescue employees; and

**Whereas**, pursuant to the Collective Bargaining Agreement, the Wellness Steering Committee is responsible for selecting a service provider and approving a service agreement to be entered into between the service provider and Palm Beach County; and

**WHEREAS**, the Wellness Steering Committee has selected the Palm Beach County Firefighters Employee Benefits Fund as the service provider to provide for the Fire Department Physician, medical physical examinations, drug testing, and related services as set forth in this Agreement; and

**Whereas**, the Palm Beach County Firefighters Employee Benefits Fund was established by Local 2928 pursuant to the Collective Bargaining Agreement to provide certain benefits to Fire-Rescue employees; and

**Whereas**, as a result of Collective Bargaining Agreement negotiations, it is the intent of the County and Local 2928 that the Palm Beach County Firefighters Employee Benefits Fund shall fully fund the medical physical examinations and drug testing for Fire-Rescue employees, including the services of the Fire Department Physician and the Medical Review Officer, and related services.

**Now Therefore**, in consideration of the mutual promises contained herein and other good and valuable consideration received, the COUNTY and the PROVIDER agree as follows:

**Article 1 - Services**

The PROVIDER's responsibility under this Agreement is to provide professional services in the area of occupational health and safety, as more specifically set forth in the Scope of Work detailed in Article 3 of this Agreement, including but not limited to providing for the delivery of medical physicals to Palm Beach County Fire-Rescue employees, providing for a "Fire Department Physician," providing for a Medical Review Officer (MRO), providing for professional medical staff, and providing for direction for the medical component of Palm Beach County Fire-Rescue's Wellness Program.

The PROVIDER hereby represents and warrants that it has and will continue to maintain all licenses, certifications and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses, certifications and approvals shall be submitted to the Wellness Coordinator upon request.

**Article 2 - Agreement Term; Renewals**

This Agreement shall take effect retroactively to January 11, 2013, and shall remain in full force and effect up to and including September 30, 2016, unless sooner terminated as provided herein. This Agreement may be renewed on the same terms and conditions set forth herein for two additional one-year periods by written agreement of the parties executed at least ninety days prior to the expiration date of this Agreement or subsequent renewal, provided that prior written approval of the Wellness Steering Committee is obtained.

### **Article 3 - Scope of Work**

**3.1** PROVIDER shall provide all personnel, labor, materials, supplies and equipment necessary to provide the required services.

**3.2** PROVIDER shall provide and maintain, through employment or by contract, sufficient qualified personnel to provide the required services. The staff provided must have the qualifications, skill, ability, and training to provide professional expertise in the areas of occupational safety and health relating to emergency and fire-rescue services. Personnel shall include a physician licensed in the State of Florida to practice medicine (or osteopathic medicine) to serve as Palm Beach County Fire-Rescue's "Fire Department Physician," and a qualified physician licensed in the State of Florida and certified to serve as the Medical Review Officer ("MRO"). The PROVIDER shall be responsible and liable to the COUNTY for assuring that the Fire Department Physician and the MRO perform all duties required of them under this Agreement. The COUNTY shall be entitled to look to the PROVIDER to remedy any failure or inadequacy of performance by the Fire Department Physician and/or the MRO. If the PROVIDER contemplates changing the Fire Department Physician or the MRO, as identified in Exhibit A, attached hereto and incorporated herein, such change must first be approved, in writing, by the Wellness Steering Committee.

**3.3** The PROVIDER, through the Fire Department Physician, shall be responsible for providing annual medical physical examinations and return to work examinations for Fire-Rescue employees, including approximately one thousand four hundred emergency service employees, in accordance with the terms of this Agreement. As part of the medical physical examination, the Fire Department Physician shall be responsible for guiding, directing, and advising the employees with regard to fitness, occupational health and safety, and suitability for various employment-related duties. The medical examinations and related services administered under this Agreement by the PROVIDER, including its employees, officers, agents, servants, subcontractors, the Fire Department Physician and the MRO, are rendered for the benefit of the COUNTY for employment related purposes. All medical records are subject to any confidentiality requirements provided by any applicable laws and regulations, including but not limited to, HIPAA and Section 119.071(4)(b), Florida Statutes.

The PROVIDER and/or the Fire Department Physician may employ or contract with other physicians, physician assistants (PA) or nurse practitioners (ARNP) to conduct the actual

medical examinations under the supervision and responsibility of the Fire Department Physician. The results of the medical examination shall be reviewed with the employee on the day of the exam by the person performing the exam, to the extent possible at that time. The Fire Department Physician shall subsequently review and interpret all findings from all medical examinations, including all laboratory tests, x-rays, EKGs and other diagnostic tests. A certified radiologist shall read, interpret and provide written findings for all questionable x-rays. For each medical examination performed, the Fire Department Physician shall certify by signed documentation that this review was completed and the date of such review. This documentation certifying that the Fire Department Physician has reviewed and interpreted all findings from all medical examinations shall be included in the patient's medical file and must also be recorded in a format that is available for review by the COUNTY upon request. The PROVIDER shall maintain a computerized database program to determine health trends. Said trends shall be reported to the COUNTY on an annual basis.

A representative of the PROVIDER shall communicate the results to the employee and ascertain whether the employee desires to discuss the results with the Fire Department Physician. If an employee cannot be contacted within a reasonable amount of time, PROVIDER will contact the Wellness Coordinator. The Fire Department Physician shall be available to counsel employees regarding all exam and test results, including any medical conditions and, if applicable, the recommendation of whether the employee is medically certified to engage in emergency operations and related training for Palm Beach County Fire-Rescue. The Fire Department Physician will designate specific hours to review with employees the results of their examinations and tests upon an employee's request.

**3.4** The medical examinations shall comply with the Collective Bargaining Agreement and this Agreement, including the minimum standards set out in **Exhibit B** to this Agreement (attached hereto and incorporated herein). In addition, the medical examination standards set out in NFPA 1582, as it may be amended from time to time, shall be used as a guideline in administering the medical examinations. Any inconsistency between the provisions of NFPA 1582, this Agreement, and/or the Collective Bargaining Agreement, shall be resolved in accordance with the following priority: (1) the Collective Bargaining Agreement; (2) this Agreement (including Exhibit B); and (3) NFPA1582. For Special Operations personnel, the medical examination shall also comply with OSHA regulation 29 CFR §1910.120, including the

requirements regarding the physician's written opinion and record-keeping. The NFPA 1582 guidelines and OSHA regulations are incorporated herein by reference. Drug testing shall be conducted as part of the medical evaluation in accordance with Article 45 and Attachment I (Drug Testing Article) of the Collective Bargaining Agreement.

**3.5** The Fire Department Physician shall refer Palm Beach County Fire-Rescue employees to the County Occupational Health Clinic for workers' compensation or to their primary care provider (PCP) as warranted by the results of the medical examination. For each applicable medical examination performed, the Fire Department Physician shall complete a Medical Exam Duty Recommendation form. This form shall be placed in the patient's file and be faxed to the Wellness Coordinator. In cases where more specific information is needed by the COUNTY on the status of an employee, the Fire Department Physician shall, to the extent required by HIPAA and any other applicable laws and regulations, obtain the specific written consent of the employee to release such confidential medical information to the Wellness Coordinator.

**3.6** PROVIDER shall maintain a medical facility(ies), located at 7240 7<sup>th</sup> Place North, West Palm Beach, Florida 33411, where all parts of the medical examination will be performed, including patient consultations and all diagnostic testing (including electrocardiograms, x-rays, spirometry, drawing blood, drug screening samples, cardiac stress testing, and hearing and vision testing). If multiple medical facilities are designated above, then PROVIDER represents and agrees that it can and will provide for all parts of the medical examination and related patient services, including all diagnostic testing and patient consultations, at each such designated facility. Any change in the facility(ies) location must first be approved by the Wellness Steering Committee. Notwithstanding anything contained in this paragraph to the contrary, blood samples may be sent out to a duly licensed independent laboratory for analysis and drug screening samples shall be sent out to a duly licensed independent laboratory for analysis, which laboratory must be approved according to the procedures of the Drug Testing Article of the Collective Bargaining Agreement. Any change in the laboratories used for blood work and/or drug screening, as identified in EXHIBIT A, must first be approved by the Wellness Steering Committee.

**3.7** In addition to drug screening as part of the medical examination, PROVIDER shall provide, at the above designated medical facility(ies), a 24 hour-7 days per week collection site

for drug testing for Fire-Rescue employees. Drug screening samples shall be submitted to a duly licensed independent laboratory approved in accordance with the Drug Testing Article of the Collective Bargaining Agreement. The MRO shall review findings of all drug tests. The drug testing procedures set forth in Article 45 and Attachment I (Drug Testing Article) of the Collective Bargaining Agreement shall be followed.

**3.8** If the PROVIDER or the Fire Department Physician is an employee's primary care provider, then non-emergency follow up care or any services or treatments not provided for by this Agreement shall be scheduled for another day. Any records related to medical services not provided for under this Agreement shall be maintained in a manner that allows them to be readily segregated from records related to the services provided for under this Agreement. PROVIDER shall maintain a patient file on each employee and place a written copy of the examination results and the Medical Exam Duty Recommendation form therein. PROVIDER shall keep all records of medical procedures in a central location, at the aforementioned medical facility(ies) and provide tabulations and data as requested by the Wellness Coordinator, subject to the confidentiality of the employees involved. To the extent permitted by law, the PROVIDER shall make all records available to the Wellness Coordinator on a twenty-four hour basis in case of emergency pursuant to a method approved by the Wellness Coordinator.

**3.9** PROVIDER, the Fire Department Physician and the MRO shall comply with all applicable federal, state and local laws and regulations, including but not limited to all laws and regulations relating to medical confidentiality and patient privacy, including the Health Insurance Portability and Accountability Act ("HIPAA"). PROVIDER, the Fire Department Physician and the MRO are charged with knowledge of all such laws and regulations.

**3.10** PROVIDER and the Fire Department Physician shall provide safety lectures and newsletter articles on related health and fitness matters for publication as needed, at the request of the Wellness Steering Committee.

**3.11** PROVIDER and the Fire Department Physician shall be available, with reasonable notification, for consultations, meetings, presentations, and seminars with Palm Beach County Fire-Rescue, the Wellness Steering Committee and/or the Wellness Coordinator. PROVIDER

and the Fire Department Physician shall provide medical guidance in occupational safety and health to the Palm Beach County Fire-Rescue Department, as requested.

**3.12** The Fire Department Physician shall use the care and diligence that a licensed physician knowledgeable and skilled in occupational medicine would use in the performance of the duties described herein.

**3.13** The services, terms and obligations provided and incurred under this Agreement by PROVIDER, including the Fire Department Physician and the MRO, shall extend and relate to all Palm Beach County Fire Rescue Volunteers as if they were Palm Beach County Fire-Rescue employees, except that Combat Volunteers shall receive drug testing as part of their annual medical examinations and shall not be subject to random drug testing. Annual medical examinations for Volunteers shall be limited to no more than thirty (30) Combat Volunteers.

#### **Article 4 – Insurance**

**4.1** PROVIDER, shall, at their own expense, maintain in full force and effect at all times during the life of this Agreement Professional Liability/Medical Malpractice Insurance and Comprehensive Commercial General Liability Insurance for the services being performed in the amounts indicated herein. All said insurances shall cover any and all contracted and/or employed medical personnel. The requirements contained herein, as well as the COUNTY'S review or acceptance of insurance maintained by PROVIDER, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the PROVIDER under this Agreement.

**4.2 Professional Liability.** Professional Liability/Medical Malpractice Insurance or equivalent Errors & Omissions Liability Insurance shall be maintained at a limit of liability of not less than \$1,000,000 Each Claim. When a self insured retention (SIR) or deductible exceeds \$10,000.00 the COUNTY reserves the right, but not the obligation, to request and review a copy of the PROVIDER's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, PROVIDER warrants that the Retroactive Date equals or precedes the effective date of this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this

Agreement, PROVIDER shall agree to purchase a SERP with a minimum reporting period not less than three (3) years. PROVIDER agrees that this coverage shall be provided on a primary basis.

**4.3 Commercial General Liability.** Commercial General Liability Insurance shall be maintained at a limit of liability of not less than \$500,000.00 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability. PROVIDER agrees that this coverage shall be provided on a primary basis.

**4.4 Additional Insureds.** PROVIDER shall endorse Palm Beach County as additional insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsements shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents". PROVIDER agrees that the Additional Insured endorsements shall provide coverage on a primary basis.

**4.5 Worker's Compensation Insurance & Employers Liability.** Provider agrees to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. Coverage shall be provided on a primary basis.

**4.6 Waiver of Subrogation.** PROVIDER shall agree to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into an pre-loss agreement to waive subrogation without an endorsement, then PROVIDER, shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which a condition to the policy specifically prohibits such an endorsement or voids coverage should PROVIDER enter into such an agreement on a pre-loss basis.

**4.7 Certificates of Insurance.** PROVIDER shall deliver to the Wellness Coordinator Certificates of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. Such Certificates of

Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage.

**4.8 Umbrella or Excess Liability.** If necessary, PROVIDER, may satisfy the minimum limits required above for Commercial General Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the "Each Occurrence" limit for Commercial General Liability. Palm Beach County shall be specifically endorsed as "Additional Insureds" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

**4.9 Right to Review.** Palm Beach County reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the life of this Agreement. Palm Beach County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally. Copies of the insurance policies shall be provided to Palm Beach County upon request.

#### **Article 5 - Payments to PROVIDER**

The PROVIDER must provide the Wellness Coordinator with a monthly summary indicating the actual date of the services rendered and the name and Fire Department Identification Number of the individuals for whom services were performed.

The PROVIDER agrees that it shall use the funding provided to it from the COUNTY under Article 33, Section 4, of the Collective Bargaining Agreement between the COUNTY and Local 2928 to fully fund all of PROVIDER's services and obligations under this professional services Agreement. The PROVIDER acknowledges and agrees that said funding under the Collective Bargaining Agreement constitutes and shall be deemed full and complete compensation to the PROVIDER for any and all services it performs and obligations it incurs under this professional services Agreement, and that the PROVIDER shall not seek nor expect any additional funding or payment from the COUNTY for the services performed and obligations incurred by the PROVIDER under this professional services Agreement. Furthermore, the PROVIDER hereby acknowledges receipt of the sum of One Dollar and other

good and valuable consideration for the services to be rendered and the obligations incurred by the PROVIDER under this professional services Agreement.

In the event that the PROVIDER is no longer the provider of the services contemplated by this professional services Agreement, then the PROVIDER shall reimburse the COUNTY an amount equal to 100% of the County's cost to obtain said services from another provider. Notwithstanding anything to the contrary, this provision shall survive the expiration or earlier termination of this Agreement, including any renewals and extensions.

The PROVIDER shall be responsible for paying all applicable compensation, fees, salaries and benefits for any personnel or contractors engaged by PROVIDER to provide the services under this Agreement, and any other costs associated with the provision of services hereunder. The COUNTY shall not be responsible for any payments to PROVIDER or any of the PROVIDER's personnel or contractors, including but not limited to the Fire Department Physician, the MRO, and any other third-parties.

#### **Article 6 - Personnel/Subcontracting**

The PROVIDER represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY. Such personnel may be employed by the PROVIDER or engaged as subcontractors by the PROVIDER, provided that the Wellness Steering Committee or the Wellness Coordinator shall have the right to reject the selection of a particular subcontractor.

All of the services required hereinunder shall be performed by the PROVIDER or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The PROVIDER warrants that all services shall be performed by skilled and competent personnel to the highest professional standards within the field. PROVIDER further represents and warrants that all personnel providing services under this Agreement, including but not limited to the Fire Department Physician and the MRO, shall have and maintain all licenses, certifications, insurance and approvals required to perform said services or required by this Agreement. Proof of such licenses, certifications, insurance and approvals shall be submitted to the Wellness Coordinator upon request.

Any changes, additions or substitutions in the PROVIDER's key personnel, as may be listed in EXHIBIT A, must be made known to the Wellness Coordinator and written approval

must be granted by the Wellness Coordinator, before said change or substitution can become effective. If any such key personnel fails to perform under this Agreement to the satisfaction of the Wellness Steering Committee or the Wellness Coordinator, then the PROVIDER agrees that it shall promptly replace such personnel subject to the approval of the Wellness Coordinator. Notwithstanding anything contained herein to the contrary, any change in the Fire Department Physician or the MRO, which must be listed in EXHIBIT A, must first be approved in writing by the Wellness Steering Committee.

All of the PROVIDER's personnel (and all subcontractors) while on County premises shall comply with all COUNTY requirements governing conduct, safety and security.

The PROVIDER, including the Fire Department Physician and the MRO, is, and shall be, in the performance of all work, services and activities under this Agreement, an Independent Contractor, and not an employee, agent or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the PROVIDER's sole direction, supervision, and control. The PROVIDER shall exercise control over the means and manner in which it and its employees and subcontractors perform the work, and in all respects the PROVIDER's relationship, and the relationship of its employees and subcontractors, to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY. The PROVIDER does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

If the PROVIDER secures the services of the Fire Department Physician and/or the MRO through a contract(s) as opposed to through direct employment, the PROVIDER shall require that said contract(s) names the COUNTY as a third-party beneficiary and binds the Fire Department Physician and/or the MRO to each and every obligation and responsibility assigned to the Fire Department Physician and/or the MRO, as applicable, under the terms of this Agreement. The COUNTY shall be entitled to look to the PROVIDER to remedy any failure or inadequacy of performance by a subcontractor, including the Fire Department Physician and/or the MRO.

#### **Article 7 – Termination/Expiration of this Agreement**

This Agreement may be terminated by the PROVIDER upon sixty (60) days' prior written notice to the COUNTY's representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the PROVIDER. This Agreement may be terminated, in whole or in part, by the COUNTY, with

cause immediately upon written notice to the PROVIDER. It also may be terminated, in whole or in part, by the COUNTY without cause upon thirty (30) days' written notice to the PROVIDER, and PROVIDER shall not be entitled to any lost profits or other damages. Unless the PROVIDER is in breach of this Agreement, the PROVIDER shall be paid for services rendered to the COUNTY's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY, the PROVIDER shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

Upon the expiration or termination of this Agreement, the PROVIDER agrees to fully cooperate with any successor provider to provide a smooth transition. The PROVIDER shall, in accordance with the direction and time frame communicated by the Wellness Coordinator and in accordance with HIPAA and any other applicable laws and regulations, release to the Palm Beach County Occupational Health Clinic and/or the successor provider, all of the Fire-Rescue Wellness files relating to services provided for under this Agreement, including, but not limited to, employee medical records, manuals, computer records and reports.

All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

#### **Article 8 - Notice**

All notices required by this Agreement shall be sent certified mail, return receipt requested, and if sent to the COUNTY shall be mailed to:

Palm Beach County Fire Rescue  
Attn: Fire Rescue Administrator  
405 Pike Road  
West Palm Beach, Florida 33411

with a copy mailed to:

Palm Beach County Fire-Rescue  
Attn: Wellness Coordinator  
405 Pike Road  
West Palm Beach, Florida 33411

and if to be sent to the PROVIDER shall be mailed to:

Palm Beach County Firefighters Employee Benefits Fund  
Attn: Administrative Manager  
7240 7<sup>th</sup> Place N  
West Palm Beach, Florida 33411

**Article 9 - Availability of Funds**

The COUNTY'S performance and obligations under this Agreement are contingent upon an annual appropriation for its purpose by the Palm Beach County Board of County Commissioners to fund this program and the accurate billing on the part of the PROVIDER.

**Article 10 - Indemnification**

The PROVIDER shall be fully liable, and protect, defend, reimburse, indemnify and hold harmless the COUNTY, including but not limited to its officers, agents, servants, employees, and members of the Wellness Steering Committee, from and against any and all claims, liability, losses, expenses, costs, damages, and/or cause of action of every kind and character, including attorney's fees and costs whether at trial or appellate levels or otherwise, arising during and as a result of the performance or nonperformance of the terms of this Agreement or otherwise due to any acts or omissions, including the disclosure of protected health information, by the PROVIDER, including but not limited to its officers, agents, servants, employees, subcontractors, the Fire Department Physician and the MRO.

**Article 11- Protected Health Information**

The PROVIDER, including but not limited to its officers, agents, servants, subcontractors, employees, the Fire Department Physician and the MRO, shall carry out its obligations under this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA"), and any other applicable

laws and regulations. Any sharing of health information between the parties shall be in accordance with what is permitted by HIPAA and any other applicable laws and regulations, including but not limited to regulations allowing for disclosures for employment purposes and for treatment, payment and healthcare operations. In order to ensure that this Agreement is consistent with HIPAA, the parties agree to cooperate in amending the Agreement if necessary to be compliant with HIPAA and its regulations. The failure of the PROVIDER, including but not limited to its officers, agents, servants, subcontractors, employees, the Fire Department Physician and the MRO, to comply with this paragraph, HIPAA or its regulations shall constitute a material breach of this Agreement. This provision shall not be deemed to preclude or limit a claim or determination of a material breach of any other provisions of this Agreement.

#### **Article 12 - Access and Audits**

The PROVIDER shall maintain adequate and accurate records related to all services performed under the terms of this Agreement and the billing of said services for a period of at least three (3) years after the completion of this Agreement. To the extent authorized by law, the COUNTY shall have access to such books, records and documents as required by this section for the purpose of inspection or audit during normal business hours, at the PROVIDER's facility(ies).

Notwithstanding anything herein to the contrary, the PROVIDER shall retain and maintain for the entire duration of the AGREEMENT, including all renewals periods, any and all employee medical records produced or received by the PROVIDER as a result of the AGREEMENT, including any and all services performed under the AGREEMENT. 'Employee medical records' includes, but is not limited to, medical/employment histories and complaints; medical examination and laboratory/diagnostic test records, charts, films, and results; medical opinions, diagnoses, notes, and recommendations; and duty recommendation forms.

#### **Article 13 - Forms and Documents**

The COUNTY shall be responsible for the development and cost of printing of forms and documents it requires for the delivery and administration of the medical physicals, as required by this Agreement.

#### **Article 14 - Remedies**

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County. No remedy herein conferred on either party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by either party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens or employees of the COUNTY and/or the PROVIDER.

#### **Article 15 - Nondiscrimination**

The PROVIDER warrants and represents that all of its employees are treated equally during employment without regard to race, sex, sexual orientation, gender identity or expression, color, religion, disability, age, marital status, familial status, national origin, or ancestry; and that no person shall, based on any of these grounds, be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of this AGREEMENT.

#### **Article 16 - Severability**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

#### **Article 17 - Entirety of Contractual Agreement**

The PROVIDER and the COUNTY agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 18 - Modifications of Work or

otherwise by written contract amendment between the parties with prior written approval of the Wellness Steering Committee.

#### **Article 18 - Modifications of Work**

The COUNTY reserves the right, upon approval of the Wellness Steering Committee, to make changes in the Scope of Work, including alterations, reductions or additions thereto. Upon receipt by the PROVIDER of the requested modifications, the PROVIDER shall, in writing, advise if the contemplated change(s) shall affect the PROVIDER's ability to meet the terms and conditions of this Agreement and provide a detailed estimate for any increase or decrease in the fees for service as identified within this Agreement. If the COUNTY so instructs in writing, the PROVIDER shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY's decision to proceed with the change. If the COUNTY elects to make said change(s), the Committee shall prepare a written amendment to this Agreement to be executed by both parties, which shall include the effective date of such modifications.

#### **Article 19 - Assignment of Rights**

The COUNTY and the PROVIDER each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the COUNTY nor the PROVIDER shall assign, sublet, convey or transfer its interest in this Agreement without the prior written permission of the other and the Wellness Steering Committee. Nothing in this Agreement shall be construed as giving any rights or benefits to anyone other than the COUNTY and the PROVIDER.

#### **Article 20 - Conflict of Interest**

The PROVIDER represents that it, including its employees, agents, officers, subcontractors, servants, the Fire Department Physician and the MRO, presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The PROVIDER further represents that no person having any such conflict of interest shall be employed for said performance of services.

The PROVIDER shall promptly notify the Wellness Coordinator, in writing, by certified

mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the PROVIDER's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of the work that the PROVIDER may undertake and request an opinion by Palm Beach County as to whether the association, interest or other circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the PROVIDER. The COUNTY agrees to notify the PROVIDER of its opinion by certified mail within thirty (30) days of receipt of notification from the PROVIDER. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the PROVIDER, the COUNTY shall so state in the notification and the PROVIDER shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the PROVIDER under the terms of this Agreement.

#### **Article 21 – Contingent Fees**

The PROVIDER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the PROVIDER, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the PROVIDER, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

#### **Article 22 – Public Entity Crimes**

As provided in sections 287.132 and 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the PROVIDER certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by section 287.133(3)(a), Florida Statutes.

#### **Article 23 – Arrears**

The PROVIDER shall not pledge the COUNTY's credit nor make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The PROVIDER further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

#### **Article 24 – Disclosure and Ownership of Documents**

The PROVIDER shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Agreement.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the PROVIDER and will not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Agreement for or at the COUNTY's expense shall be and remain the COUNTY's property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

#### **Article 25 – Time of the Essence**

The PROVIDER acknowledges and agrees that time is of the essence in its performance of the terms of this Agreement. The failure of the PROVIDER, including but not limited to its officers, agents, servants, subcontractors, employees, the Fire Department Physician and the MRO, to timely perform its obligations under this Agreement or to otherwise timely comply with the terms of this Agreement shall constitute a material breach of this Agreement. This provision shall not be deemed to preclude or limit a claim or determination of a material breach of any other provisions of this Agreement.

#### **Article 26 – Default by PROVIDER**

If the PROVIDER materially breaches this Agreement, the COUNTY shall have the right, but not the obligation, to cure such default, including the right to designate another provider, Fire-Department Physician, MRO, or laboratories, to perform any services. The PROVIDER shall immediately reimburse COUNTY for all sums paid to effect such cure. The COUNTY's exercise of its right to cure a default shall not be deemed to be a waiver of any rights or other remedies available to the COUNTY, including the right to terminate this Agreement in accordance with Article 7.

#### **Article 27 – Federal and State Tax**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the PROVIDER. The PROVIDER shall not be exempted from paying sales taxes to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the PROVIDER authorized to use the COUNTY's Tax Exemption Number in securing such materials.

The PROVIDER shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

#### **Article 28 – Criminal History Records Check**

The PROVIDER shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if PROVIDER's employees or subcontractors are required under this Agreement to enter a "critical facility" as identified in Resolution R-2003-1274. The PROVIDER acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the PROVIDER shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

#### **Article 29 - Regulations; Licensing Requirements**

The PROVIDER shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including but not limited to HIPAA and conflict of interest and collusion laws. PROVIDER is presumed to be familiar with all federal, state and local laws,

ordinances, codes and regulations that may in any way affect the services offered, including but not limited to HIPAA and conflict of interest and collusion laws.

**Article 30 - Palm Beach County Office of the Inspector General**

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. To the extent permitted by law, the Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the PROVIDER, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, PROVIDER AND THE COUNTY have made and executed this Agreement on the date first written above.

PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COMMISSIONERS

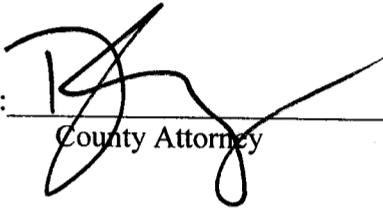
ATTEST:  
Sharon R. Beck, Clerk & Comptroller  
Circuit Court

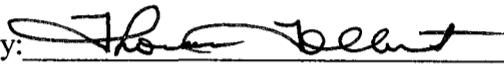
BY: \_\_\_\_\_  
Steven L. Abrams, Mayor

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By:  \_\_\_\_\_  
County Attorney

By:  \_\_\_\_\_  
Fire-Rescue

WITNESS:

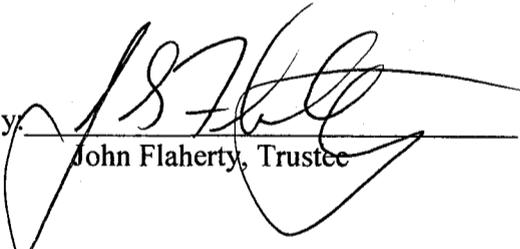
PALM BEACH COUNTY  
FIREFIGHTERS EMPLOYEE  
BENEFITS FUND,  
BY ITS BOARD OF TRUSTEES

By:  \_\_\_\_\_

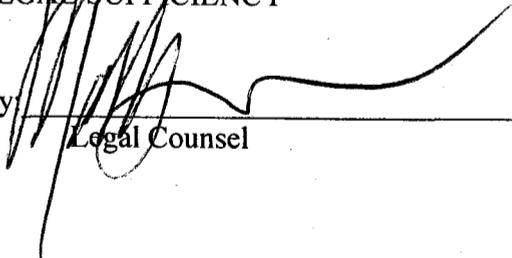
By:  \_\_\_\_\_  
Armand Nault, Trustee

WITNESS:

By:  \_\_\_\_\_

By:  \_\_\_\_\_  
John Flaherty, Trustee

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:  \_\_\_\_\_  
Legal Counsel

## **EXHIBIT A**

### **Key Personnel and Laboratories**

Fire Department Physician: Dr. John F. Villa, MD

Medical Review Officer: Doctors Review Service, including  
Dr. Neil Dash, MD and other qualified  
and certified physicians

Laboratory for Blood Work: LabCorp

Laboratory for Drug Screening: LabCorp

Other Key Personnel:  
Leigh Clarke, Operations Manager  
Brad Burdette, PA (Physician Assistant)  
Susan Collins, PA (Physician Assistant)  
Neisy Rubio, MA (Medical Assistant)

**EXHIBIT B  
COMPONENTS OF MEDICAL PHYSICAL**

Medical examinations shall comply with the Collective Bargaining Agreement and this Agreement, including the minimum standards set out in this **Exhibit B** to the Agreement. In addition, the medical examination standards set out in NFPA 1582, as it may be amended from time to time, shall be used as a guideline in administering the medical examinations. Any inconsistency between the provisions of NFPA 1582, this Agreement, and/or the Collective Bargaining Agreement, shall be resolved in accordance with the following priority: (1) the Collective Bargaining Agreement; (2) this Agreement (including Exhibit B); and (3) NFPA1582.

For Special Operations personnel, the medical examination shall also comply with OSHA regulation 29 CFR §1910.120, including the requirements regarding the physician's written opinion and record-keeping. The NFPA 1582 guidelines and OSHA regulations are incorporated herein by reference. Drug testing shall be conducted as part of the medical evaluation in accordance with Article 45 and Attachment I (Drug Testing Article) of the Collective Bargaining Agreement.

**THE ANNUAL MEDICAL PHYSICAL EXAM MINIMUM REQUIREMENTS**

**Complete Medical History**

- Medical and surgical history
- Family history
- Allergy history
- Review of body systems
- Prior work/exposure history
- Prior history of toxic involvement

**Audiometry-**

- Performed in a sound proof booth
- hearing thresholds for 500 to 8.000 hertz

**Urinalysis**

- UA Culture- if indicated
- Specific gravity
- Glucose
- PH
- Blood
- Nitrites
- Leucocytes
- Protein
- Ketones
- Bilirubin
- Urobilinogen

**Vital Signs**

- Temperature
- Height and weight
- Blood pressure
- Pulse rate
- Respiratory rate

**Electrocardiogram**

Twelve-lead resting tracing

**Radiology**

Chest x-ray, PA. 14 X 17

Chest x-rays shall include an initial baseline, and shall be repeated every five (5) years, or as medically indicated.

**Pulmonary Function Screening Test**

Vital capacity

One second expiratory volume

**Blood Chemistry Profile****Lipid Panel**

Triglycerides

Cholesterol, Total

HDL Cholesterol

LDL Cholesterol

Cholesterol/HDL Ratio

**Comprehensive Metabolic Panel**

Glucose

Urea Nitrogen (BUN)

Creatinine

BUN/Creatinine Ratio

Sodium

Potassium

Chloride

Carbon Dioxide

Calcium

Protein, Total

Albumin

Globulin

Albumin/globulin ratio

Bilirubin, Total

Alkaline Phosphatase

AST

ALT

**CBC**

WBC

RBC

Hemoglobin

Hematocrit

MCV

MCH

MCHC

RDW  
PLATELET Count  
Absolute Neutrophils  
Absolute Lymphocytes  
Absolute Monocytes  
Absolute Eosinophils  
Absolute Basophils  
Neutrophils  
Lymphocytes  
Monocytes  
Eosinophils  
Basophils

PSA

Varicella IGG

Hepatitis C  
HCV Riba 2 Hepatitis C Antibody

CRP- C Reactive Protein (cardiac profile)

Hepatitis B  
Core Antibody total  
Hepatitis B titer

HIV- 1 AB Screen with Reflex  
MMR screening and vaccination

**5 Panel Drug Test (Substance Abuse Panel)** – shall be included only until such time Random Drug Testing is implemented in accordance with the Collective Bargaining Agreement.

Amphetamines  
Cocaine Metabolites  
Opiates  
Phencyclidine  
Marijuana Metabolites

**Integrity Checks**  
Creatinine  
Nitrates  
pH

Stool Occult Blood Test (3) for stomach and intestinal tract bleeding

**Ophthalmologic Screening**

Visual Acuity- Near and Far point  
Color vision  
Vertical phoria  
Lateral phoria

Stereopsis- depth perception  
Light and Accommodation reflex  
Extra ocular eye movements (CN III, IV, VI)  
Assess visual fields (CN, II)  
Corneal Reflex (CN V)  
Fundoscopic Examination

**Complete Physical Examination**

Rectal examination for men > age 40 or with history of bleeding  
Breast examination in women (pelvic exam)  
Pap smear (optional)  
Extensive skin and musculoskeletal examination  
Otosopic Examination of the ears  
Auscultate Heart and Lungs  
HEENT  
Peripheral Vascular  
Respiratory  
Abdomen  
Lymphatic  
Neurological

-TB Screening

**COMMUNITY ASSISTANCE TEAM (CAT) PHYSICAL**

Basic Physical Evaluation (Height, Weight, Blood Pressure, Eye Exam)

**SPECIAL OPERATIONS UPGRADE (SPLOPS)**

24 hour Urine Specimen- Heavy Metals Panel  
Pseudocholesterase  
Stress Testing-  
Treadmill exercise cardiac stress test for SPLOPS

Review of exam and lab results with examinee

Written documentation of examination results to be given to examinee

When indicated or requested, a copy of the exam results can be forwarded to the examinee's personal physician.

Complete the Medical Exam Duty Recommendation form

Place written documentation of examination results and duty recommendation in patient's file.

Certified radiologist reads questionable x-rays.  
Computerized data base program to determine health trends.