

**AGREEMENT**

**between**

**CITY OF FORT LAUDERDALE**

**and**

**U.S. HEALTHWORKS MEDICAL GROUP  
OF FLORIDA, INC.**

**for**

**OCCUPATIONAL MEDICAL, DRUG AND ALCOHOL TESTING PROGRAMS**

## **ARTICLE 1 - INFORMATION/SPECIAL CONDITIONS**

### **1.1 PURPOSE**

This is an agreement, made and entered into by and between: City of Fort Lauderdale, a Florida municipality, hereinafter referred to as "CITY", and U.S. HealthWorks Medical Group of Florida, Inc., a Florida corporation, hereinafter referred to as "SECOND PARTY".

The parties to the agreement hereby agree that the purpose of this agreement is for the SECOND PARTY to provide the CITY with general and special occupational medical services, and with drug and alcohol testing program services (collectively "Project").

### **1.2 CONTRACT PERIOD**

The initial contract term shall commence upon final execution of the contract by the City and shall expire three years from that date. The City reserves the right to extend the contract for two additional one-year terms providing all terms conditions and specifications remain the same and both parties agree to the extension.

In the event services are scheduled to end because of the expiration of this contract, the Contractor shall continue the service upon the request of the City's Manager, Procurement and Contracts. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Contractor shall be compensated for the service at the rate in effect when this extension clause is invoked by the City.

### **1.3 COST ADJUSTMENTS**

Prices quoted shall be firm for the initial contract term. Thereafter, any extensions which may be approved by the City shall be subject to the following: Costs for any extension terms shall be subject to an adjustment only if increases or decreases occur in the industry. Such adjustment shall be based on the latest yearly percentage increase in the All Urban Consumers Price Index (CPI-U) as published by the Bureau of Labor Statistics, U.S. Dep't. of Labor, and shall not exceed five percent (5%).

The yearly increase or decrease in the CPI shall be that latest Index published and available prior to the end of the contract year then in effect, as compared to the index for the comparable month one year prior.

Any requested adjustment shall be fully documented and submitted to the City at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective on the beginning date of the approved contract extension.

The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, or considered to be excessive, or if decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the Contract will be considered cancelled on the scheduled expiration date.

### **1.4 NO EXCLUSIVE CONTRACT/ADDITIONAL SERVICES**

Contractor agrees and understands that the contract shall not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical services at its sole option.

#### 1.5 DELETION OR MODIFICATION OF SERVICES

The City reserves the right to delete any portion of this Contract at any time without cause, and if such right is exercised by the City, the total fee shall be reduced in the same ratio as the estimated cost of the work deleted bears to the estimated cost of the work originally planned. If work has already been accomplished on the portion of the Contract to be deleted, the Contractor shall be paid for the deleted portion on the basis of the estimated percentage of completion of such portion.

If the Contractor and the City agree on modifications or revisions to the task elements, after the City has approved work to begin on a particular task or project, and a budget has been established for that task or project, the Contractor will submit a revised budget to the City for approval prior to proceeding with the work.

#### 1.6 ADDITIONAL ITEMS/DUTIES

The City may require additional items/duties of a similar nature, but not specifically listed in the contract. The Contractor agrees to provide such items/duties, and shall provide the City prices on such additional items or duties based upon a formula or method which is the same or similar to that contained in this Agreement. If the price(s) offered are not acceptable to the City, and the situation cannot be resolved to the satisfaction of the City, the City reserves the right to procure those items from other vendors, or to cancel the contract upon giving the Contractor thirty (30) days written notice.

#### 1.7 PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

#### 1.8 INSURANCE

The SECOND PARTY shall maintain during the term of this Agreement and during the term of any extension or renewal of this Agreement and provide to the City a certificate of commercial general liability insurance with an AM Best's A- rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's risk manager, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage, including coverage for premises/operations, products/completed operations,

contractual liability, independent contractors, and coverage for the liability assumed by the SECOND PARTY under the indemnification provision of this Agreement in accordance with the City of Fort Lauderdale's Risk Management Manual.

The SECOND PARTY shall maintain during the term of this Agreement and during the term of any extension or renewal of this Agreement and provide to the City a certificate of professional liability/medical malpractice insurance with an AM Best's A- rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's risk manager, with policy limits not less than \$1,000,000/claim, and \$3,000,000 aggregate, insuring the SECOND PARTY and the City against liability arising out of all acts and omissions by the SECOND PARTY during the term of this Agreement and during the term of any extension or renewal thereof, including coverage for the liability assumed by the SECOND PARTY under the indemnification provision of this Agreement.

The commercial general liability policy shall name the City of Fort Lauderdale, a Florida municipality, as certificate holder and as an additional insured.

If required by law the SECOND PARTY shall maintain during the term of this Agreement and during the term of any extension or renewal of this Agreement and provide to the City a certificate of worker's compensation insurance, including employer's liability, with an AM Best's A- rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City of Fort Lauderdale's risk manager, with a limit of \$500,000 employer's liability, in compliance with all state and federal laws, and in accordance with the City of Fort Lauderdale's Risk Management Manual.

The SECOND PARTY shall provide to the City at least thirty (30) days' written notice by registered mail, return receipt requested, addressed to the City of Fort Lauderdale's risk manager, prior to cancellation or modification of any required insurance. The provisions of this entire Section shall remain in effect until four (4) years after the expiration or termination of this Agreement and any extension or renewal of this Agreement, unless the SECOND PARTY is able to secure an occurrence insurance policy as may be approved by the City of Fort Lauderdale's risk manager.

Certificate holder should be addressed as follows:

City of Fort Lauderdale  
Procurement Services Department  
100 N. Andrews Avenue, Room 619  
Fort Lauderdale, FL 33301

## 1.9 SUBCONTRACTING

The SECOND PARTY shall ensure that all of the SECOND PARTY'S subcontractors perform in accordance with the terms and conditions of this Contract. The SECOND PARTY shall be fully responsible for all of the SECOND PARTY'S subcontractors' performance, and liable for any of the SECOND PARTY'S subcontractors' non-performance and all of the SECOND PARTY'S subcontractors' acts and omissions. The SECOND PARTY shall defend at the SECOND PARTY'S expense, counsel being subject to the City's approval or disapproval, and indemnify and hold harmless the City and the City's officers, employees, and agents from and

against any claim, lawsuit, third-party action, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of the SECOND PARTY'S subcontractors for payment for work performed for the City, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of the SECOND PARTY'S subcontractors or by any of the SECOND PARTY's subcontractors' officers, agents, or employees. The SECOND PARTY'S use of subcontractors in connection with this Agreement shall be subject to the City's prior written approval, which approval the City may revoke at any time.

#### 1.10 COMPENSATION

CITY agrees to pay SECOND PARTY for services listed in Article 3 in accordance with the pricing schedule detailed in Article 3. No amount shall be paid to SECOND PARTY to reimburse its expenses.

#### 1.11 METHOD OF BILLING AND PAYMENT

SECOND PARTY may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the expenses incurred. SECOND PARTY shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers. The certification shall be accompanied by a copy of the notification sent to each subcontractor and suppliers listed in item 2 of the form, explaining the good cause why payment has not been made.

Payment terms will be considered to be Net 30 days after the date of satisfactory performance and receipt of correct invoice at the Finance Department, City of Fort Lauderdale, 100 N. Andrews Avenue, Fort Lauderdale, FL 33301, whichever occurs last.

Notwithstanding any provision of this Agreement to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by CITY

Payment shall be made to SECOND PARTY at:  
U.S. HealthWorks Medical Group of Florida, Inc.  
P. O. Box 404473  
Atlanta, GA 30384-4473

#### 1.12 TERMINATION

This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach, or for convenience by action of the Board, upon not less than thirty (30) days' written notice. This Agreement may also be terminated by the City Manager upon such

notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. An erroneous termination for cause shall be considered a termination for convenience.

Termination of this Agreement for cause by CITY shall include, but not be limited to, negligent, intentional, or repeated submission for payment of false or incorrect bills or invoices, or negligent, intentional, or repeated submission of false or fraudulent reports or statements requested by CITY or required by this Agreement, failure to perform the work to the City's satisfaction, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement, or multiple breach of this Agreement which has a material adverse effect on the efficient administration of the Project notwithstanding whether any such breach was previously waived or cured.

The CITY may, in the CITY'S sole discretion, terminate this Agreement immediately or upon such notice as the CITY deems appropriate in the CITY'S sole discretion by giving written notice to the SECOND PARTY in the event of any one or more of the following:

(a) The license of any physician employee or subcontractor member of SECOND PARTY'S Broward County, Florida, staff to practice medicine in any state where he or she holds such a license is suspended or revoked, or the he or she is placed on probation, reprimanded, fined, or has his or her medical practice privileges restricted by any state or governing authority;

(b) Any physician employee or subcontractor member of SECOND PARTY'S Broward County, Florida, staff is charged with, or indicted or informed against or arrested for, or convicted of, any felony or misdemeanor or criminal traffic offense;

(c) Any physician employee or subcontractor member of SECOND PARTY'S Broward County, Florida, staff is found, in connection with his or her service as a provider of occupational medical services, to have committed negligence or gross negligence or recklessness or an intentional tort or medical malpractice by a jury or judge of a court of competent jurisdiction regardless of the results of any retrial, rehearing, or appeal;

(d) Any insurance coverage required by this Agreement is not maintained or is not maintained at the required level or is canceled.

The SECOND PARTY shall provide the CITY with written notice within five (5) calendar days after the SECOND PARTY is informed of any of the foregoing grounds for immediate termination. In addition, if any medical malpractice action or proceeding in connection with the SECOND PARTY's service as a provider of occupational medical services is initiated against the SECOND PARTY or against any physician employee or subcontractor member of SECOND PARTY'S Broward County, Florida, staff, whether such action or proceeding arises out of events occurring prior to or after the effective date of this Agreement, then SECOND PARTY shall, within five (5) calendar days after the SECOND PARTY is informed of such action or proceeding, provide the CITY with written notice of such action or proceeding.

Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice which

shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

In the event this Agreement is terminated for convenience, SECOND PARTY shall be paid for any services properly performed to the date the Agreement is terminated; however, upon being notified of CITY's election to terminate, SECOND PARTY shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. SECOND PARTY acknowledges and agrees that ten dollars (\$10.00) has been paid by CITY, the receipt and adequacy of which is hereby acknowledged by SECOND PARTY, as specific consideration to SECOND PARTY for CITY's right to terminate this Agreement for convenience.

In the event this Agreement is terminated, any compensation payable by CITY shall be withheld until all documents are provided to CITY pursuant to "Ownership of Documents" section of this Agreement.

#### 1.13 EEO COMPLIANCE

By execution of this Agreement, SECOND PARTY represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). CITY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle CITY to terminate this Agreement and recover from SECOND PARTY all monies paid by CITY pursuant to this Agreement, and may result in debarment from CITY'S competitive procurement activities.

#### 1.14 OWNERSHIP OF DOCUMENTS

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of CITY. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by SECOND PARTY, whether finished or unfinished, shall become the property of CITY and shall be delivered by SECOND PARTY to the CITY'S Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to SECOND PARTY shall be withheld until all documents are received as provided herein.

#### 1.15 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of SECOND PARTY and its subcontractors that are related to the Project. SECOND PARTY and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of SECOND PARTY and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, SECOND PARTY or its subcontractor, as applicable, shall make same available at no cost to CITY in written form. SECOND PARTY and its subcontractors shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to SECOND PARTY'S and its subcontractors' records, SECOND PARTY and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by SECOND PARTY or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY'S disallowance and recovery of any payment upon such entry. SECOND PARTY shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 1.15.

#### 1.16 INDEPENDENT CONTRACTOR

SECOND PARTY is an independent contractor under this Agreement. Services provided by SECOND PARTY pursuant to this Agreement shall be subject to the supervision of SECOND PARTY. In providing such services, SECOND PARTY and its agents and employees shall not act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to SECOND PARTY or SECOND PARTY'S agents any authority of any kind to bind CITY in any respect whatsoever.

#### 1.17 THIRD PARTY BENEFICIARIES

Neither SECOND PARTY nor CITY intends to directly or indirectly benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

## 1.18 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

### FOR CITY:

Director, Procurement Services Department  
City of Fort Lauderdale  
100 N. Andrews Avenue, Suite 619  
Fort Lauderdale, Florida 33301

### FOR SECOND PARTY:

U.S. HealthWorks Medical Group of Florida, Inc.  
Attn: Vice President of Contracting  
28035 Avenue Stanford West  
Valencia, CA 91355

## 1.19 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. CITY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by SECOND PARTY of this Agreement or any right or interest herein without CITY'S written consent.

SECOND PARTY represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

SECOND PARTY shall perform its duties, obligations, and services under this Agreement in a skillful, respectable, and respectful manner. The quality of SECOND PARTY'S performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

## 1.20 CONFLICTS

Neither SECOND PARTY nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with SECOND PARTY'S loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

SECOND PARTY further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he, she, or SECOND PARTY is not a party, unless compelled by court order. Further, SECOND PARTY agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court order. The limitations of this section shall not preclude SECOND PARTY or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event SECOND PARTY is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, SECOND PARTY agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as SECOND PARTY.

#### 1.21 MATERIALITY AND WAIVER OF BREACH

CITY and SECOND PARTY agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

CITY'S failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 1.22 COMPLIANCE WITH LAWS

SECOND PARTY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

#### 1.23 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

#### 1.24 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

## 1.25 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of the Articles of this Agreement, the term, statement, requirement, or provision contained in the Articles of this Agreement shall prevail and be given effect.

## 1.26 JURISDICTION, VENUE. WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

## 1.27 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City Commission and SECOND PARTY or others delegated authority to or otherwise authorized to execute same on their behalf.

## 1.28 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

## 1.29 HIPAA COMPLIANCE

As a business associate of the CITY, SECOND PARTY shall not disclose individually identifiable protected health information ("PHI") except as provided by the Health Insurance Portability and Accountability Act of 1996 and the Privacy and Security Rules, 45 Code of Federal Regulations Parts 160 through 164 as may be amended or revised, (collectively "HIPAA"), and SECOND PARTY shall execute a Business Associate Agreement with the CITY for the purpose of complying with HIPAA and Subtitle D of the Health Information Technology for Economic and Clinical Health Act which is Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), 42 U.S.C.A. §17921 et seq. (2014) as may be amended or revised, ("HITECH"). In addition, SECOND PARTY shall comply with HIPAA and HITECH in its capacity as a covered entity. If required by HIPAA or other laws, SECOND PARTY shall include in its "Notice of Privacy Practices" notice of SECOND PARTY'S and CITY'S uses of client's PHI. The requirement that SECOND PARTY comply with this provision, together with HIPAA and HITECH, shall survive the expiration or earlier termination of this Agreement.

## 1.30 CONTINGENCY FEE

SECOND PARTY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for SECOND PARTY, 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 SECOND PARTY, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the making of this Agreement. For a breach or violation of this provision, CITY shall have the right, at its discretion, to terminate this Agreement without liability, or to deduct from this Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

## 1.31 INCORPORATION BY REFERENCE

The attached Exhibit "A" is incorporated into and made a part of this Agreement.

## 1.32 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

## 1.33 NON-DISCRIMINATION

SECOND PARTY shall not illegally discriminate in any activity related to this Agreement against any person on the basis of race, color, religion, sex, national origin, disability, or marital status, or violate any applicable federal or state civil rights or human rights law or applicable county or municipal civil rights or human rights ordinance.

## 1.34 PUBLIC RECORDS

Subject to certain statutory exemptions, including Section 119.071(4)(b)1, Florida Statutes (2015), as may be amended or revised, and subject to HIPAA, records made or received by the CITY in connection with this Agreement, including this Agreement, and records made or received by the SECOND PARTY in connection with this Agreement are public records subject to public inspection and copying. The CITY'S determination of whether any or no exemption applies shall control.

SECOND PARTY shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2015), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the CITY, all public records in possession of the SECOND PARTY upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

#### 1.35 INDEMNIFICATION

The SECOND PARTY shall protect and defend at SECOND PARTY'S expense, counsel being subject to the CITY'S approval, and indemnify and hold harmless the CITY and the CITY'S officers, employees, and agents, from and against any and all claims, damages, judgments, losses, settlements, fines, penalties, and expenses, including any award of attorney fees and any award of costs, that may arise out of, or be occasioned by, any negligent, reckless, or intentional act or omission, or medical malpractice, by the SECOND PARTY or by any of SECOND PARTY'S officers, employees, agents, or subcontractors.

#### 1.36 SCRUTINIZED COMPANIES

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013):

The SECOND PARTY certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2015), as may be amended or revised. The CITY may terminate this Contract at the CITY's option if the SECOND PARTY is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2015), as

may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2015), as may be amended or revised.

## **ARTICLE 2 - SCOPE OF SERVICES**

- 2.1 **PURPOSE:** The parties to this Agreement hereby agree that the purpose of this Agreement is for the SECOND PARTY to provide CITY with general and special occupational medical services, and with drug and alcohol testing program services. The CITY recognizes that the goal of its occupational health program is to detect any occupational medical conditions which would place City of Fort Lauderdale employees at increased risk of material health impairment from work exposures or work practices.
- 2.2 All services performed by the SECOND PARTY shall be in compliance with City of Fort Lauderdale, Florida, Broward County, Florida, State of Florida, and United States Government regulations, codes and standards, and in accordance with applicable requirements outlined in OSHA Regulations, the Omnibus Transportation Employee Testing Act of 1991 (hereinafter referred to as the "Act") and U.S. Department of Transportation regulations, including but not limited to those promulgated by the Federal Transit Administration, the Federal Highway Administration, and the National Highway Traffic Safety Administration.
- 2.3 **OCCUPATIONAL HEALTH SERVICES:** SECOND PARTY will provide occupational medical surveillance, epidemiological analyses and occupational medical consultation, supplementing City of Fort Lauderdale's Risk Management Division in its efforts to anticipate, identify, evaluate and control exposure to occupational hazards.
- 2.4 **EPIDEMIOLOGICAL ANALYSES:** SECOND PARTY will, on an annual basis, provide a retrospective epidemiological report appropriate to the time period, type of exam, employee population(s) and other factors which may provide useful information to the CITY'S occupational health program. The content of such exam is left to the discretion of the SECOND PARTY, in consultation with the CITY, and is intended to highlight trends, commonalities and statistically significant events or conditions.
- 2.5 **OCCUPATIONAL MEDICAL CONSULTATION:** SECOND PARTY will, on an as needed basis, provide to the CITY'S Risk Management Division occupational medical advice with regard to occupational health issues.
- 2.6 **SUBSTANCE ABUSE SERVICES:** SECOND PARTY will provide breath and urine specimen collection, and drug and alcohol testing services in accordance with the Act, other pertinent regulations and CITY policy. Such services shall include but not be limited to, provision of collection sites, Medical Review Officer services, laboratory services, and random drug and alcohol testing services.
- 2.7 **RESULTS:** All non-medical, non-confidential results of evaluations and testing shall be reported by SECOND PARTY to the City through the appropriate coordinating City department representative located at his or her designated City office. All results from employee evaluations and testing will be available to the CITY on a faxed qualification sheet or by the CITY interoffice courier within 72 hours of the patient's appointment. SECOND PARTY shall

inform, in writing, all employees undergoing an occupational medical exam and/or substance abuse testing, how to obtain a copy of their results in accordance with CITY policy and directives.

- 2.8 RECORDS: It is the CITY'S intention to maintain only non-confidential records at its facilities. The results of all evaluations and testing conducted pursuant to this Agreement shall be provided to CITY by SECOND PARTY.
- 2.9 STORAGE: SECOND PARTY will maintain all occupational medical records for City of Fort Lauderdale employees. SECOND PARTY will ensure adequate security and retention of the records in accordance with the Act and with CITY policy, and will preserve their doctor-patient confidentiality according to current best management practices.
- 2.10 ACCESS: SECOND PARTY shall comply with all written requests from CITY employees requesting access to their individual records. SECOND PARTY shall allow access to a CITY employee's individual records by employee's designee(s), upon receiving employee's written authorization to release such records to such designee(s).
- 2.11 LOCATIONS AND HOURS OF SERVICE: A SECOND PARTY physician will be available to the CITY staff 24 hours per day. SECOND PARTY will provide the CITY with a contact number for afterhours emergencies. SECOND PARTY will provide occupational health and the collection services described herein to CITY employees at the following locations:

U.S. HealthWorks Medical Group  
407 S.E. 24th Street  
Fort Lauderdale, FL 33316

Office hours: Monday to Friday: 8:00 a.m. - 6:00 p.m.  
Saturday: 9:00 a.m. - 3:00 p.m.

U.S. HealthWorks Medical Group  
3501 N. Federal Highway  
Pompano Beach, FL 33064

Office hours: Monday to Friday: 8:00 a.m. - 6:00 p.m.

Changes to and additional locations may be negotiated and agreed to, in writing, by the City's Director of Human Resources or the City's Director of Human Resources's designee ("Primary City Contact" and the SECOND PARTY on behalf of the parties to this Agreement.

2.11.1 AFTER HOURS: For testing to be performed after business hours of SECOND PARTY's locations, the CITY, through its Primary City Contact or his/her designee, shall call SECOND PARTY's 24-hour telephone number (954) 467-2140, an answering service will gather the following information: location of the Primary City Contact, location where the testing is required to occur, and the telephone number where the Primary City Contact can be reached within fifteen (15) minutes. SECOND PARTY's medical technician will speak to the Primary City Contact directly and inquire about the specific testing circumstances and decide which location would be most appropriate to meet to conduct the testing. The employee to be tested shall meet the qualified SECOND PARTY technician at the agreed-upon testing site,

and testing shall be conducted in accordance with this Agreement, the Act, and all implementing regulations.

A SECOND PARTY medical technician shall be available 24 hours a day, must make every reasonable effort to respond to CITY'S call within fifteen (15) minutes of the CITY'S call, and must take all steps reasonably necessary to ensure testing is accomplished in accordance with all applicable regulations.

2.11.2 In the event of an accident requiring the transport of an employee who must be transported to a non-SECOND PARTY medical facility, the SECOND PARTY shall make all reasonable efforts to conduct drug and alcohol tests at the receiving medical facility. The CITY will notify the SECOND PARTY's as soon as possible after the accident.

- 2.12 WAITING TIMES: The SECOND PARTY will see patients within 30 minutes of their appointment time. All efforts will be made to see patients promptly and SECOND PARTY staff will notify the CITY in the event that an emergency occurs in an attempt to eliminate any undue waiting times. Should an emergency occur that will require the employee to wait, the SECOND PARTY will attempt to see the patient as quickly as possible, or contact the CITY to determine whether the patient should be rescheduled. The SECOND PARTY shall make all reasonable efforts to see the employee within thirty (30) minutes of his/her scheduled appointment. If the employee is not seen within one hour of the scheduled appointment, then the SECOND PARTY waives its fee for the visit for that employee unless SECOND PARTY can demonstrate to the CITY'S Contract Administrator's satisfaction that there were extenuating circumstances beyond the SECOND PARTY'S control. SECOND PARTY'S factual description or explanation of the extenuating circumstances shall be provided to CITY'S Safety and Occupational Health Coordinator within five (5) days of occurrence. The determination by the CITY'S Contract Administrator on whether or not extenuating circumstances existed beyond SECOND PARTY'S control shall be final and binding on the parties.
- 2.13 SCHEDULING: All requested appointments shall be scheduled to occur within seven days of the request date. The SECOND PARTY shall accommodate the schedules of shift workers in scheduling exams. If necessary, such exams scheduled outside ordinary working hours of the above locations may be provided at other SECOND PARTY facilities within Broward County, if SECOND PARTY assumes responsibility for quality, content and payment of the examination.
- 2.14 REFERRALS: The SECOND PARTY will contact the CITY in the event that an outside referral of any type is recommended. Referrals will be made from SECOND PARTY'S referral network. No services will be performed by an outside referral physician until the CITY approves the outside referral and the selected physician.
- 2.15 EMPLOYMENT PHYSICALS: Employment physicals include, but are not limited to, occupational health questionnaires, hands on examinations, blood work and assorted testing. The parties agree and acknowledge that the content of the occupational health examinations may vary depending on the anticipated hazards of the job. Therefore, the CITY agrees to assess the risk groups of various positions and update the SECOND PARTY'S information accordingly. SECOND PARTY shall periodically review occupational medical protocols to ensure standardization, precision and a sound match with employee exposure.

2.15.1 EXPANDED TESTING: Recognizing that the protocols developed for employee occupational health examinations will not meet the needs of all employment situations, SECOND PARTY may request authorization from the CITY to conduct expanded testing for specific medical concerns. Prior to conducting any additional testing outside of the protocols, SECOND PARTY agrees to obtain written authorization from the Primary City Contact. SECOND PARTY acknowledges and agrees that the CITY will not pay SECOND PARTY for any expanded testing conducted by SECOND PARTY without the prior written approval of the CITY. The CITY, through its Primary Contact, may request additional occupational medical exams or services, as the CITY deems necessary.

2.16 DRUG AND ALCOHOL SCREENS: The SECOND PARTY will provide drug and alcohol testing services and will perform all such testing services in full accordance with the U.S. Department of Transportation Regulation 49 CFR Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs." Federal Transit Administration regulations 49 CFR Part 655, "Prevention of Prohibited Drug Use and Alcohol Misuse in Transit Operations" and "Prevention of Alcohol Misuse in Transit Operations," respectively, and Federal Highway Administration regulation 49 CFR Part 382, "Controlled Substance and Alcohol Use and Testing."

2.16.1 All locations for collections of specimens shall conform to the Act and related regulations.

## 2.17 STAFFING:

2.17.1 MEDICAL REVIEW OFFICER. The Medical Review Officer (MRO) shall be a licensed physician who has knowledge of substance abuse disorders and has appropriate occupational medical training to interpret and evaluate the individual's confirmed positive result together with his or her occupational medical history and other relevant biomedical information. The MRO shall not be an employee, officer, director, partner or proprietor of, nor have a financial interest either direct or indirect, in the lab used for drug screening.

2.17.2 The SECOND PARTY'S Walk-in Clinics shall be staffed during all operating hours with qualified Breath Alcohol Technicians (BATS) and other personnel who are fully trained and proficient in conducting testing in accordance with the Act and implementing regulations.

## 2.18 SERVICE STANDARDS FOR DRUG AND/OR ALCOHOL TESTING:

2.18.1 The SECOND PARTY shall make all reasonable efforts to commence the required drug and/or alcohol testing within thirty (30) minutes of arrival of an employee subject to such testing at the testing site. If testing does not commence within one hour of the employee's arrival, then the SECOND PARTY waives its testing fee for testing that employee, unless the SECOND PARTY can demonstrate to Contract Administrator's satisfaction that there were extenuating circumstances beyond the SECOND PARTY's control. SECOND PARTY's factual description or explanation of the extenuating circumstances shall be provided to CITY'S Safety and Occupational Health Coordinator within five (5) days of occurrence. The determination by Contract Administrator on whether or not extenuating circumstances existed beyond SECOND PARTY's control shall be final and binding on the parties.

2.18.2 The SECOND PARTY shall immediately alert the City's Employee Relations Office of a breath alcohol test result of an employee which exceeds .02 BAC and shall further immediately notify in writing the Director of Human Resources, or designee. The SECOND PARTY representative shall convey to the employee the CITY'S instruction that the employee is not to drive upon departure, but is to arrange alternate transportation.

2.18.3 The SECOND PARTY shall maintain records in accordance with federal regulations, and shall provide monthly, quarterly, and annual reports as requested by the Contract Administrator. The reports which are generated in order to fulfill federal regulatory reporting requirements must be provided on the forms prescribed in the regulations. All records are the property of the CITY and should be submitted in a timely manner.

2.18.4 Such trained staff from SECOND PARTY'S Walk-in Clinic shall be available around the clock by telephone, to report as needed to accident scenes, emergency collection site locations, and non-SECOND PARTY medical facilities, when a serious accident prevents the employee from reporting to the SECOND PARTY testing site within the regulatory time limits. Such trained staff shall also be available during SECOND PARTY'S non-business hours to respond to CITY testing needs. Such staff shall have with them the necessary supplies and equipment to conduct drug and alcohol testing in accordance with the Act and implementing regulations.

2.18.5 Upon request, the SECOND PARTY shall provide a list of all Breath Alcohol Technicians (BATS) who will perform services under this Agreement, and will certify that those BATS have successfully completed training in operating the Evidential Breath Testing (EBT) device employed, and that the training has been determined by the National Highway Traffic Safety Administration (NHTSA) to be equivalent to the NHTSA Model Course. The list and certification required by this paragraph must be provided to CITY prior to commencing alcohol testing services. Only such certified BATS may conduct alcohol testing pursuant to this Agreement. The certification must be updated as BATS or EBT or both are added or changed.

2.18.6 The SECOND PARTY shall use only EBT which are on the most current conforming products list issued by NHTSA. Further, the SECOND PARTY shall maintain and calibrate such equipment in accordance with the manufacturer's quality assurance plan and 49 CFR Part 40. The SECOND PARTY shall provide CITY with a copy of the manufacturer's quality assurance plan and certify, on a quarterly basis, that the SECOND PARTY has maintained and calibrated such equipment in accordance with the plan and the regulations. The SECOND PARTY shall perform external calibration checks in accordance with the regulations. In the event an EBT fails a calibration check, it shall be taken out of service until serviced in accordance with the manufacturer's quality assurance plan and 49 CFR Part 40.

2.19 CERTIFICATIONS: SECOND PARTY'S Proof of MRO and BATS qualifications must be provided to the CITY prior to commencing drug testing services. Upon CITY'S request, the MRO must be available to testify in any forum concerning any dispute involving MRO services provided pursuant to this Agreement.

## 2.20 LABORATORY SERVICES:

2.20.1 The SECOND PARTY shall use only substance abuse analytical laboratories certified by the U.S. Department of Health and Human Services. Proof of such certifications shall be provided to the CITY prior to use of any laboratory pursuant to this Agreement. All such laboratories used by the SECOND PARTY shall have a quality control program in accordance with 49 CFR Part 40.

2.20.2 SECOND PARTY shall be responsible for assuring that laboratories performing other or additional analytical work maintain appropriate accreditation. SECOND PARTY shall provide CITY with documentation of its laboratories' current accreditation at least annually and prior to using any new laboratory.

2.20.3 Representatives of the CITY shall be entitled to visit and examine the SECOND PARTY'S facilities and laboratories performing services under this agreement.

2.20.4 The SECOND PARTY shall administer a random program for all CITY employees subject to testing under the Act. This shall include maintenance of separate testing pools, as requested by the CITY and required by law, randomly selecting dates and individuals for testing, notifying the Primary City Contact in order to arrange for the employees to report to testing, and ensuring that the required percentage of each pool is randomly tested annually consistent with the federal regulations. The CITY will provide initial lists of covered employees, and will provide updates to those lists as often as necessary as determined by CITY. Within each pool there may be two separate random selections, one for controlled substance testing and another for alcohol testing.

2.21 REFUSAL TO TEST: The BAT shall notify the Primary City Contact of any employee who has failed to supply an adequate breath or urine specimen. The Primary City Contact may refer the employee to a SECOND PARTY physician for an immediate occupational medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to test. Upon completion of the examination, the SECOND PARTY shall report his or her conclusions to the CITY in writing.

2.22 The SECOND PARTY shall provide all necessary supplies (including but not limited to, chain of custody and reporting forms, and collection supplies), equipment, and facilities necessary to the provision of services pursuant to this Agreement.

## 2.23 OCCUPATIONAL MEDICAL SERVICES:

A Maintains the random number/name generator pools for various City employee groups: General Employees, Fire Rescue and Police personnel. On a weekly basis and as-needed basis, generates participant lists for random drug and alcohol screenings that are administered in accordance with DOT guidelines and/or the respective collective bargaining agreement. Updates the name pool databases on an on-going basis. Compiles and produces reports of the data for submission to the DOT.

B Serves as the City's medical expert and regularly provides medical advice; consults extensively with City staff to develop medical assessment evaluations.

- C Provides City staff with health and wellness education information and establishes protocols for the prevention and treatment of infectious diseases and other exposures (i.e., MRSA, Mold, TB and Bodily Fluids).
- D Performs a general review of all medical protocols for pre-employment physicals and recommends updates for implementation.
- E Be available 24 hours/7 days a week via telephone to the CITY'S Employee Relations Office for medical inquiries and to confirm the status of medical evaluations.
- F Provides general safety information to the CITY'S Employee Relations Office.
- G Advises City staff regarding general medical inquiries and provides basic care for non-occupational illness/injuries in order to keep the employee on the job or assist the employee with obtaining proper health care.

2.24 FEES: The services will be provided at the costs in the schedules herein and as otherwise set forth in this Agreement.

## ARTICLE 3 - FEES

### **GROUP I (FOR BEACH LIFEGUARD)**

Physical Exam	\$47.00
Drug Screen (5 Panel)	\$47.00
Audiometry (booth)	\$19.00
EKG	\$37.00
Pulmonary Function Test	\$32.00
Body Fat	\$5.00
Vision	N/C
Urine (dipstick)	\$13.00
PPD / Tine Test	<u>\$15.00</u>
	<b>\$215.00</b>

### **GROUP I (SEASONAL LIFEGUARD)**

Physical Exam	\$47.00
Drug Screen (5 Panel)	\$47.00
Audiometry (booth)	\$19.00
Vision	N/C
PPD / Tine Test	<u>15.00</u>
	<b>\$128.00</b>

### **GROUP II & GROUP III**

Physical Exam	\$47.00
Drug Screen (5 Panel)	\$47.00
Audiometry (booth)	\$19.00
Vision	N/C
Urine (dipstick)	<u>\$13.00</u>
	<b>\$126.00</b>

### **GROUP I - FIRE**

Physical Exam	\$47.00
Drug Screen (8 Panel)	\$57.00
Audiometry (booth)	\$19.00
EKG	\$37.00
Pulmonary Function Test	\$32.00
Body Fat	\$5.00
Vision	N/C
Urine Nicotine (Single drug class)	\$22.00
Urine (dipstick)	\$13.00
PPD / Tine Test	<u>\$15.00</u>
	<b>\$247.00</b>

**GROUP I - POLICE OFFICERS**

Physical Exam	\$47.00
Drug Screen (10 Panel split)	\$72.00
Audiometry (booth)	\$19.00
EKG	\$37.00
Body Fat	\$5.00
Vision	N/C
Urinalysis	\$13.00
CMP, CBC	\$30.00
PPD / Tine Test	<u>\$15.00</u>
	<b>\$238.00</b>

**FIT FOR DUTY****\$225.00**

Includes: physical, reviewing case with any referral physicians, total review of injury and ability of employee to perform requested job. Meeting with employee to discuss potential limitations relating to injury/illness w/Dictated Summary

**HAZMAT (BASELINE , AND EXIT)**

Comprehensive Physical Exam	\$67.00
Body fat	\$5.00
Lab Work Up w/UA	\$240.00
Colo-rectal Screen	\$10.00
EKG	\$37.00
Audiogram (booth)	\$19.00
Pulmonary Function Test	\$32.00
PPD/ Tine Test	\$15.00
Chest x-ray (2 views baseline and every 5 years)	<u>\$63.00</u>
	<b>\$488.00</b>

Tetanus / Diphtheria **as required** \$40.00

**HAZMAT (ANNUAL)**

Comprehensive Physical Exam	\$67.00
Pulmonary Function Test	\$32.00
Audiogram (booth)	<u>\$19.00</u>
	<b>\$118.00</b>

**PEST CONTROL**

Comprehensive Physical Exam	\$67.00
Blood Profile (CBC, CMP, LIPID PROFILE, UA)	\$60.00
RBC Cholinesterase (blood)	\$95.00
Colo-rectal screen	\$10.00
EKG	\$37.00
Audiogram (booth)	\$19.00
Pulmonary Function Test	\$32.00
Chest x-ray (2views)	<u>\$63.00</u>
	<b>\$383.00</b>

**ASBESTOS EXAM**

Physical Exam w/pulmonary history	\$47.00
Pulmonary Function Test	\$32.00
Audiogram (booth)	\$19.00
Range of Motion	\$15.00
CMP, CBC & UA	<u>\$40.00</u>
	<b>\$153.00</b>

Optional: B-reading (w/chest x-ray baseline & every 5 years)	<b>\$100.00</b>
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**BOMB SQUAD PHYSICALS**

Extended Physical	\$77.00
(includes: OSHA Respirator Med Eval & Questionnaire)	
Drug Screen (10 Panel)	\$72.00
Audiogram	\$19.00
Chest x-ray (2 views)	\$63.00
EKG (over 35 years of age)	\$37.00
PSA (over 40 years of age)	\$55.00
Urinalysis	<u>\$13.00</u>
	<b>\$336.00</b>

**COMPREHENSIVE PHYSICAL EXAM (Divers)**

Includes: Comprehensive Exam	\$67.00
Audiogram (booth)	\$19.00
Range of Motion	\$15.00
EKG	\$37.00
PFT	\$32.00
CMP, CBC, UA	\$40.00
Chest x-ray (2 views)	<u>\$63.00</u>
	<b>\$273.00</b>
Optional: Drug Screen	\$47.00

**RESPIRATOR ADD ON**

Respirator/history form)	\$120.00
Pulmonary Function Test	
Chest x-ray	

**RESPIRATOR CLEARANCE**

Physical Exam (Respirator Physical)	\$47.00
Pulmonary Function Test	\$32.00
Audiogram (booth)	\$19.00
Range Of Motion	\$15.00
CMP, CBC, & UA	<u>\$40.00</u>
	<b>\$153.00</b>

Optional: B-reading (w/chest x-ray baseline & every 5 years)	<b>\$100.00</b>
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**POLICE DEPARTMENT - ADDITIONAL SERVICES**

Hepatitis A profile (IgM only for active)	\$52.00
Hepatitis B profile ( Antigen)	\$52.00
Hepatitis B Titer	\$40.00
Hepatitis C profile	\$40.00
Hepatitis A, B & C Panel	\$120.00
Tetanus/Diphtheria	\$40.00
Immune Globulin (Gamma Globulin)	\$30.00
HIV Blood Test	\$65.00
After hours Medical Assistant (per hour)	\$100.00

**RANDOM DRUG TESTING**

Drug Screen (NIDA 5 Panel)	\$47.00
Blood Alcohol	\$40.00
Breath Alcohol	\$33.00
GC/MS Drug Confirmation (per metabolite)	\$75.00
Employee Request for Split Sample Testing ( <b>EE pays</b> )	<b>\$175.00</b>
Alcohol Screening (on NHTSA approved EBT unit)	\$33.00
Alcohol Confirmation (on approved EBT unit)	\$33.00
Shy Lung Physical Evaluation (by Medwork physical)	\$47.00

**Occupational Medical Services****\$1,000.00/month**

Pre-employment, post-employment, Special Examinations  
and Testing, Random number/name generator pool (max 500)

**RANDOM DRUG TESTING - FIRE**

Drug Screen (8 panel split)	\$57.00
Blood Alcohol	\$40.00
Breath Alcohol (EBT)	\$33.00
Breath Alcohol Confirmation	\$33.00
GC/MS Drug Confirmation (per metabolite)	\$75.00
Shy Lung Physical Evaluation (by Medwork physical)	\$47.00
Employee Request for Split Sample Testing ( <b>Employee pays</b> )	<b>\$175.00</b>

**RANDOM DRUG TESTING - POLICE**

Drug Screen (10 Panel split)	\$72.00
**Optional Physical if selected for Random	
Physical Exam	\$47.00
Audio (whisper)	N/C
Vision	N/C
EKG	\$37.00
Lab Profile (CBC, CMP, Lipid profile & UA)	\$60.00

GC/MS Drug Confirmation (per metabolite)	\$75.00
Employee Request for Split Sample Testing ( <b>EE pays</b> )	\$175.00
Alcohol Screening (on NHTSA approved EBT unit)	\$33.00
Alcohol Confirmation (on approved EBT unit)	\$33.00
10 Panel with Ecstasy and Extended Opiates	\$160.00
Anabolic Steroids	\$300.00

**-----POLICE AFTER HOURS RATES-----**

Basic Physical	\$195.00
Drug Screen (10 Panel split)	(See below after rate)
GC/MS Drug Confirmation (per metabolite)	\$75.00
Employee Request for Split Sample Testing ( <b>EE pays</b> )	\$175.00
Alcohol Screening (on NHTSA approved EBT unit)	\$150.00
Alcohol Confirmation (on approved EBT unit)	\$150.00
EKG (12 lead)	\$55.00
Blood profile (CMP, CBC & Urinalysis)	\$75.00

**-----AFTER HOURS RATES FOR DRUG & ALCOHOL-----**

Drug Screen (NIDA 5 Panel) for the 1 <sup>st</sup> hour	\$150.00 Add \$75.00 to each additional hour or any part thereof up to three hours.
EBT Alcohol Screen	\$150.00
Bundled (both tests) for the 1 <sup>st</sup> hour	\$225.00 Add \$75.00 to each additional hour or any part thereof up to three hours. Maximum billing is \$300.00 for Drug test or \$375.00 for Drug and Alcohol
GC/MS Drug Confirmation (per metabolite)	\$75.00
Employee Request for Split Sample Testing ( <b>EE pays</b> )	\$175.00
Alcohol Screening (on NHTSA approved EBT unit)	\$33.00
Alcohol Confirmation (on approved EBT unit)	\$33.00
Shy Lung Physical Evaluation (at Medwork clinic)	\$45.00

**SUPPORT SERVICES:**

Consulting (ad hoc S&OH; special projects	150.00/hr
MRO legal activities deposition court appearances, etc.	\$250.00/hr

**DOCTOR'S NOTE / Abuse of Sick Leave (IAFF Employees)**

City Cost

(No Employees cost per EE Relations)

N/C

**FUNCTIONAL PERFORMANCE**

(includes computerized NIOSH static lift testing and spinal inclinometry)

\$70.00

**JOB SITE ANALYSIS**

Assesses the physical demands, essential functions and specific job requirements. Measure of force, posture and repetitions required for job Performance are assessed.

\$120.00/hr

**ERGONOMIC ASSESSMENT**

Provides prevention strategies, job adaptations and redesign recommendations to minimize injuries, reduce fatigue and promote safe, comfortable work stations

\$100.00/hr

**ADD-ON OPTIONS/ADDITIONAL SERVICES**

Audiometric (booth)/Onsite	\$19.00/23.00
Audiometric comparison	\$15.00
Audiometry (booth)	\$19.00
Blood Collection	\$25.00
B-reading	\$100.00
Breath Alcohol (EBT)	\$33.00
Cadmium Standard	\$120.00
CBC	\$11.00
Chest x-ray (1 view)	\$35.00
Chest x-ray (2 views)	\$63.00
CMP	\$15.00
Flu Vaccine	\$26.00
Gamma globulin	\$30.00
GC/MS Drug Confirmation	\$75.00
Glucose Assay	\$15.00
Heavy Metals panel	\$100.00
Hemoglobin A1C	\$50.00
Hemoglobin	\$10.00
Hepatitis A Titer	\$40.00
Hepatitis A Vaccine (series of 2 @ \$95.00)	\$190.00
Hepatitis B Titer	\$40.00
Hepatitis B Vaccine (series of 3 @ \$75.00)	\$225.00
Hepatitis C Test	\$40.00
HIV Screening	\$65.00
Lead	\$50.00
Lipid Panel	\$20.00

**ADD-ON OPTIONS/ADDITIONAL SERVICES (continued)**

Lumbar x-ray (2 views)	\$65.00
Meningitis	\$125.00
MMR	\$75.00
PFT	\$32.00
PPD / Tine Test (on site)	\$15.00
PPD / Tine Test	\$15.00
Pregnancy (serum) HCG	\$60.00
PSA	\$55.00
Rabies (3 series)	\$200.00each
Rabies immune globulin	\$300.00/2ml
Range of Motion	\$15.00
RBC Cholinestrace	\$95.00
Serum Cholinestrace	\$90.00
Respirator Fit Testing	\$110.00 per mask up to 2 masks \$25.00 for each additional mask
RPR (VDRL)	\$13.00
Stress Test	\$200.00
Tetanus/Diphtheria	\$40.00
Twinrix	\$150.00/each
Typhoid Vaccine	\$82.00
Urinalysis	\$13.00
Urine Collection	\$20.00
Varicella Vaccine	\$100.00
Vision Screening (only)	\$15.00
Yellow Fever	\$140.00
ZPP	\$30.00

IN WITNESS WHEREOF, the City of Fort Lauderdale and U.S. HealthWorks Medical Group of Florida, Inc., execute the foregoing Agreement for Occupational Medical, Drug and Alcohol Testing Programs as follows:

ATTEST:

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
Jeffrey A. Modarelli, City Clerk

\_\_\_\_\_  
John P. "Jack" Seiler, Mayor

\_\_\_\_\_  
Lee R. Feldman, City Manager

Approved as to form:

\_\_\_\_\_  
City Attorney

WITNESSES:

U.S. HealthWorks Medical Group of Florida, Inc.

\_\_\_\_\_  
Signature  
Print Name:

By: \_\_\_\_\_  
Print Name:  
President

\_\_\_\_\_  
Signature  
Print Name:

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_  
Secretary

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing Business Associate Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_ as president for U.S. HealthWorks Medical Group of Florida, Inc., a Florida corporation.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

**EXHIBIT "A"**  
**CITY OF FORT LAUDERDALE**  
**GENERAL CONDITIONS**

These instructions are standard for all contracts for commodities or services issued through the City of Fort Lauderdale Procurement Services Division. The City may delete, supersede, or modify any of these standard instructions for a particular contract by indicating such change in the Invitation to Bid (ITB) Special Conditions, Technical Specifications, Instructions, Proposal Pages, Addenda, and Legal Advertisement. In this general conditions document, Invitation to Bid (ITB) and Request for Proposal (RFP) are interchangeable.

**PART I BIDDER PROPOSAL PAGE(S) CONDITIONS:**

- 1.01 BIDDER ADDRESS:** The City maintains automated vendor address lists that have been generated for each specific Commodity Class item through our bid issuing service, BidSync. Notices of Invitations to Bid (ITB'S) are sent by e-mail to the selection of bidders who have fully registered with BidSync or faxed (if applicable) to every vendor on those lists, who may then view the bid documents online. Bidders who have been informed of a bid's availability in any other manner are responsible for registering with BidSync in order to view the bid documents. There is no fee for doing so. If you wish bid notifications be provided to another e-mail address or fax, please contact BidSync. If you wish purchase orders sent to a different address, please so indicate in your bid response. If you wish payments sent to a different address, please so indicate on your invoice.
- 1.02 DELIVERY:** Time will be of the essence for any orders placed as a result of this ITB. The City reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the Bidder and accepted by the City.
- 1.03 PACKING SLIPS:** It will be the responsibility of the awarded Contractor, to attach all packing slips to the OUTSIDE of each shipment. Packing slips must provide a detailed description of what is to be received and reference the City of Fort Lauderdale purchase order number that is associated with the shipment. Failure to provide a detailed packing slip attached to the outside of shipment may result in refusal of shipment at Contractor's expense.
- 1.04 PAYMENT TERMS AND CASH DISCOUNTS:** Payment terms, unless otherwise stated in this ITB, will be considered to be net 45 days after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified, whichever occurs last. Bidder may offer cash discounts for prompt payment but they will not be considered in determination of award. If a Bidder offers a discount, it is understood that the discount time will be computed from the date of satisfactory delivery, at the place of acceptance, and receipt of correct invoice, at the office specified, whichever occurs last.
- 1.05 TOTAL BID DISCOUNT:** If Bidder offers a discount for award of all items listed in the bid, such discount shall be deducted from the total of the firm net unit prices bid and shall be considered in tabulation and award of bid.
- 1.06 BIDS FIRM FOR ACCEPTANCE:** Bidder warrants, by virtue of bidding, that the bid and the prices quoted in the bid will be firm for acceptance by the City for a period of one hundred twenty (120) days from the date of bid opening unless otherwise stated in the ITB.
- 1.07 VARIANCES:** For purposes of bid evaluation, Bidder's must indicate any variances, no matter how slight, from ITB General Conditions, Special Conditions, Specifications or Addenda in the space provided in the ITB. No variations or exceptions by a Bidder will be considered or deemed a part of the bid submitted unless such variances or exceptions are listed in the bid and referenced in the space provided on the bidder proposal pages. If variances are not stated, or referenced as required, it will be assumed that the product or service fully complies with the City's terms, conditions, and specifications.
- By receiving a bid, City does not necessarily accept any variances contained in the bid. All variances submitted are subject to review and approval by the City. If any bid contains material variances that, in the City's sole opinion, make that bid conditional in nature, the City reserves the right to reject the bid or part of the bid that is declared, by the City as conditional.
- 1.08 NO BIDS:** If you do not intend to bid please indicate the reason, such as insufficient time to respond, do not offer product or service, unable to meet specifications, schedule would not permit, or any other reason, in the space provided in this ITB. Failure to bid or return no bid comments prior to the bid due and opening date and time, indicated in this ITB, may result in your firm being deleted from our Bidder's registration list for the Commodity Class Item requested in this ITB.
- 1.09 MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION AND BUSINESS DEFINITIONS:** The City of Fort Lauderdale wants to increase the participation of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Small Business Enterprises (SBE) in its procurement activities. If your firm qualifies in accordance with the below definitions please indicate in the space provided in this ITB.

Minority Business Enterprise (MBE) "A Minority Business" is a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

The term "Minority Business Enterprise" means a business at least 51 percent of which is owned by minority group members or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by minority group members. For the purpose of the preceding sentence, minority group members are citizens of the United States who include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

Women Business Enterprise (WBE) a "Women Owned or Controlled Business" is a business enterprise at least 51 percent of which is owned by females or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by females.

Small Business Enterprise (SBE) "Small Business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts.

BLACK, which includes persons having origins in any of the Black racial groups of Africa.

WHITE, which includes persons whose origins are Anglo-Saxon and Europeans and persons of Indo-European decent including Pakistani and East Indian.

HISPANIC, which includes persons of Mexican, Puerto Rican, Cuban, Central and South American, or other Spanish culture or origin, regardless of race.

NATIVE AMERICAN, which includes persons whose origins are American Indians, Eskimos, Aleuts, or Native Hawaiians.

ASIAN AMERICAN, which includes persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

#### **1.10 MINORITY-WOMEN BUSINESS ENTERPRISE PARTICIPATION**

It is the desire of the City of Fort Lauderdale to increase the participation of minority (MBE) and women-owned (WBE) businesses in its contracting and procurement programs. While the City does not have any preference or set aside programs in place, it is committed to a policy of equitable participation for these firms. Proposers are requested to include in their proposals a narrative describing their past accomplishments and intended actions in this area. If proposers are considering minority or women owned enterprise participation in their proposal, those firms, and their specific duties have to be identified in the proposal. If a proposer is considered for award, he or she will be asked to meet with City staff so that the intended MBE/WBE participation can be formalized and included in the subsequent contract.

#### **1.11 SCRUTINIZED COMPANIES**

This Section applies to any contract for goods or services of \$1 million or more:

The Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2011), as may be amended or revised. The City may terminate this Contract at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2011), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2011), as may be amended or revised.

#### **1.12 DEBARRED OR SUSPENDED BIDDERS OR PROPOSERS**

The bidder or proposer certifies, by submission of a response to this solicitation, that neither it nor its principals and subcontractors are presently debarred or suspended by any Federal department or agency.

### **Part II DEFINITIONS/ORDER OF PRECEDENCE:**

#### **2.01 BIDDING DEFINITIONS** The City will use the following definitions in its general conditions, special conditions, technical specifications, instructions to bidders, addenda and any other document used in the bidding process:

INVITATION TO BID (ITB) when the City is requesting bids from qualified Bidders.

REQUEST FOR PROPOSALS (RFP) when the City is requesting proposals from qualified Proposers.

BID – a price and terms quote received in response to an ITB.

PROPOSAL – a proposal received in response to an RFP.

BIDDER – Person or firm submitting a Bid.

PROPOSER – Person or firm submitting a Proposal.

RESPONSIVE BIDDER – A person whose bid conforms in all material respects to the terms and conditions included in the ITB.

RESPONSIBLE BIDDER – A person who has the capability in all respects to perform in full the contract requirements, as stated in the ITB, and the integrity and reliability that will assure good faith performance.

FIRST RANKED PROPOSER – That Proposer, responding to a City RFP, whose Proposal is deemed by the City, the most advantageous to the City after applying the evaluation criteria contained in the RFP.

SELLER – Successful Bidder or Proposer who is awarded a Purchase Order or Contract to provide goods or services to the City.

CONTRACTOR – Successful Bidder or Proposer who is awarded a Purchase Order, award Contract, Blanket Purchase Order agreement, or Term Contract to provide goods or services to the City.

CONTRACT – A deliberate verbal or written agreement between two or more competent parties to perform or not to perform a certain act or acts, including all types of agreements, regardless of what they may be called, for the procurement or disposal of equipment, materials, supplies, services or construction.

CONSULTANT – Successful Bidder or Proposer who is awarded a contract to provide professional services to the City.

The following terms may be used interchangeably by the City: ITB and/or RFP; Bid or Proposal; Bidder, Proposer, or Seller; Contractor or Consultant; Contract, Award, Agreement or Purchase Order.

#### **2.02 SPECIAL CONDITIONS:** Any and all Special Conditions contained in this ITB that may be in variance or conflict with these General Conditions shall have precedence over these General Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Conditions shall prevail in their entirety,

### **PART III BIDDING AND AWARD PROCEDURES:**

#### **3.01 SUBMISSION AND RECEIPT OF BIDS:** To receive consideration, bids must be received prior to the bid opening date and time. Unless otherwise specified, Bidders should use the proposal forms provided by the City. These forms may be duplicated, but failure to use the forms may cause the bid to be rejected. Any erasures or corrections on the bid must be made in ink and initialed by Bidder in ink. All information submitted by the Bidder shall be printed, typewritten or filled in with pen and ink. Bids shall be signed in ink. Separate bids must be submitted for each ITB issued by the City in separate sealed envelopes properly marked. When a particular ITB or RFP requires multiple copies of bids or proposals they may be included in a single envelope or package properly sealed and identified. Only send bids via facsimile transmission (FAX) if the ITB specifically states that bids sent via FAX will be considered. If such a statement is not included in the ITB, bids sent via FAX will be rejected. Bids will be publicly opened in the Procurement Office, or other designated area, in the presence of Bidders, the public, and

City staff. Bidders and the public are invited and encouraged to attend bid openings. Bids will be tabulated and made available for review by Bidder's and the public in accordance with applicable regulations.

- 3.02 MODEL NUMBER CORRECTIONS:** If the model number for the make specified in this ITB is incorrect, or no longer available and replaced with an updated model with new specifications, the Bidder shall enter the correct model number on the bidder proposal page. In the case of an updated model with new specifications, Bidder shall provide adequate information to allow the City to determine if the model bid meets the City's requirements.
- 3.03 PRICES QUOTED:** Deduct trade discounts, and quote firm net prices. Give both unit price and extended total. In the case of a discrepancy in computing the amount of the bid, the unit price quoted will govern. All prices quoted shall be F.O.B. destination, freight prepaid (Bidder pays and bears freight charges, Bidder owns goods in transit and files any claims), unless otherwise stated in Special Conditions. Each item must be bid separately. No attempt shall be made to tie any item or items contained in the ITB with any other business with the City.
- 3.04 TAXES:** The City of Fort Lauderdale is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption number for EIN is 59-6000319, and State Sales tax exemption number is 85-8013875578C-1.
- 3.05 WARRANTIES OF USAGE:** Any quantities listed in this ITB as estimated or projected are provided for tabulation and information purposes only. No warranty or guarantee of quantities is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.
- 3.06 APPROVED EQUAL:** When the technical specifications call for a brand name, manufacturer, make, model, or vendor catalog number with acceptance of APPROVED EQUAL, it shall be for the purpose of establishing a level of quality and features desired and acceptable to the City. In such cases, the City will be receptive to any unit that would be considered by qualified City personnel as an approved equal. In that the specified make and model represent a level of quality and features desired by the City, the Bidder must state clearly in the bid any variance from those specifications. It is the Bidder's responsibility to provide adequate information, in the bid, to enable the City to ensure that the bid meets the required criteria. If adequate information is not submitted with the bid, it may be rejected. The City will be the sole judge in determining if the item bid qualifies as an approved equal.
- 3.07 MINIMUM AND MANDATORY TECHNICAL SPECIFICATIONS:** The technical specifications may include items that are considered minimum, mandatory, or required. If any Bidder is unable to meet or exceed these items, and feels that the technical specifications are overly restrictive, the bidder must notify the Procurement Services Division immediately. Such notification must be received by the Procurement Services Division prior to the deadline contained in the ITB, for questions of a material nature, or prior to five (5) days before bid due and open date, whichever occurs first. If no such notification is received prior to that deadline, the City will consider the technical specifications to be acceptable to all bidders.
- 3.08 MISTAKES:** Bidders are cautioned to examine all terms, conditions, specifications, drawings, exhibits, addenda, delivery instructions and special conditions pertaining to the ITB. Failure of the Bidder to examine all pertinent documents shall not entitle the bidder to any relief from the conditions imposed in the contract.
- 3.09 SAMPLES AND DEMONSTRATIONS:** Samples or inspection of product may be requested to determine suitability. Unless otherwise specified in Special Conditions, samples shall be requested after the date of bid opening, and if requested should be received by the City within seven (7) working days of request. Samples, when requested, must be furnished free of expense to the City and if not used in testing or destroyed, will upon request of the Bidder, be returned within thirty (30) days of bid award at Bidder's expense. When required, the City may request full demonstrations of units prior to award. When such demonstrations are requested, the Bidder shall respond promptly and arrange a demonstration at a convenient location. Failure to provide samples or demonstrations as specified by the City may result in rejection of a bid.
- 3.10 LIFE CYCLE COSTING:** If so specified in the ITB, the City may elect to evaluate equipment proposed on the basis of total cost of ownership. In using Life Cycle Costing, factors such as the following may be considered: estimated useful life, maintenance costs, cost of supplies, labor intensity, energy usage, environmental impact, and residual value. The City reserves the right to use those or other applicable criteria, in its sole opinion that will most accurately estimate total cost of use and ownership.
- 3.11 BIDDING ITEMS WITH RECYCLED CONTENT:** In addressing environmental concerns, the City of Fort Lauderdale encourages Bidders to submit bids or alternate bids containing items with recycled content. When submitting bids containing items with recycled content, Bidder shall provide documentation adequate for the City to verify the recycled content. The City prefers packaging consisting of materials that are degradable or able to be recycled. When specifically stated in the ITB, the City may give preference to bids containing items manufactured with recycled material or packaging that is able to be recycled.
- 3.12 USE OF OTHER GOVERNMENTAL CONTRACTS:** The City reserves the right to reject any part or all of any bids received and utilize other available governmental contracts, if such action is in its best interest.
- 3.13 QUALIFICATIONS/INSPECTION:** Bids will only be considered from firms normally engaged in providing the types of commodities/services specified herein. The City reserves the right to inspect the Bidder's facilities, equipment, personnel, and organization at any time, or to take any other action necessary to determine Bidder's ability to perform. The Procurement Director reserves the right to reject bids where evidence or evaluation is determined to indicate inability to perform.
- 3.14 BID SURETY:** If Special Conditions require a bid security, it shall be submitted in the amount stated. A bid security can be in the form of a bid bond or cashiers check. Bid security will be returned to the unsuccessful bidders as soon as practicable after opening of bids. Bid security will be returned to the successful bidder after acceptance of the performance bond, if required; acceptance of insurance coverage, if required; and full execution of contract documents, if required; or conditions as stated in Special Conditions.
- 3.15 PUBLIC RECORDS/TRADE SECRETS/COPYRIGHT:** The Proposer's response to the RFP is a public record pursuant to Florida law, which is subject to disclosure by the City under the State of Florida Public Records Law, Florida Statutes Chapter 119.07 ("Public Records Law"). The City shall permit public access to all documents, papers, letters or other material submitted in connection with this RFP and the Contract to be executed for this RFP, subject to the provisions of Chapter 119.07 of the Florida Statutes.

Any language contained in the Proposer's response to the RFP purporting to require confidentiality of any portion of the Proposer's response to the RFP, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the RFP constitutes a Trade Secret. The City's determination of whether an exemption applies shall be final, and the proposer agrees to defend, indemnify, and hold harmless the city and the city's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the city's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR RESPONSE TO THE RFP AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR RESPONSE TO THE RFP OR ANY PART THEREOF AS COPYRIGHTED.

**3.16 PROHIBITION OF INTEREST:** No contract will be awarded to a bidding firm who has City elected officials, officers or employees affiliated with it, unless the bidding firm has fully complied with current Florida State Statutes and City Ordinances relating to this issue. Bidders must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Bidder and removal of the Bidder from the City's bidder lists and prohibition from engaging in any business with the City.

**3.17 RESERVATIONS FOR AWARD AND REJECTION OF BIDS:** The City reserves the right to accept or reject any or all bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the bidding process. The City also reserves the right to award the contract on a split order basis, lump sum basis, individual item basis, or such combination as shall best serve the interest of the City. The City reserves the right to make an award to the responsive and responsible bidder whose product or service meets the terms, conditions, and specifications of the ITB and whose bid is considered to best serve the City's interest. In determining the responsiveness of the offer and the responsibility of the Bidder, the following shall be considered when applicable: the ability, capacity and skill of the Bidder to perform as required; whether the Bidder can perform promptly, or within the time specified, without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the Bidder; the quality of past performance by the Bidder; the previous and existing compliance by the Bidder with related laws and ordinances; the sufficiency of the Bidder's financial resources; the availability, quality and adaptability of the Bidder's supplies or services to the required use; the ability of the Bidder to provide future maintenance, service or parts; the number and scope of conditions attached to the bid.

If the ITB provides for a contract trial period, the City reserves the right, in the event the selected bidder does not perform satisfactorily, to award a trial period to the next ranked bidder or to award a contract to the next ranked bidder, if that bidder has successfully provided services to the City in the past. This procedure to continue until a bidder is selected or the contract is re-bid, at the sole option of the City.

**3.18 LEGAL REQUIREMENTS:** Applicable provisions of all federal, state, county laws, and local ordinances, rules and regulations, shall govern development, submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a bid response hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any bidder shall not constitute a cognizable defense against the legal effect thereof.

**3.19 BID PROTEST PROCEDURE:** ANY PROPOSER OR BIDDER WHO IS NOT RECOMMENDED FOR AWARD OF A CONTRACT AND WHO ALLEGES A FAILURE BY THE CITY TO FOLLOW THE CITY'S PROCUREMENT ORDINANCE OR ANY APPLICABLE LAW MAY PROTEST TO THE DIRECTOR OF PROCUREMENT SERVICES DIVISION (DIRECTOR), BY DELIVERING A LETTER OF PROTEST TO THE DIRECTOR WITHIN FIVE (5) DAYS AFTER A NOTICE OF INTENT TO AWARD IS POSTED ON THE CITY'S WEB SITE AT THE FOLLOWING LINK: [http://www.fortlauderdale.gov/purchasing/notices\\_of\\_intent.htm](http://www.fortlauderdale.gov/purchasing/notices_of_intent.htm)

THE COMPLETE PROTEST ORDINANCE MAY BE FOUND ON THE CITY'S WEB SITE AT THE FOLLOWING LINK: <http://www.fortlauderdale.gov/purchasing/protestordinance.pdf>

#### **PART IV BONDS AND INSURANCE**

**4.01 PERFORMANCE BOND:** If a performance bond is required in Special Conditions, the Contractor shall within fifteen (15) working days after notification of award, furnish to the City a Performance Bond, payable to the City of Fort Lauderdale, Florida, in the face amount specified in Special Conditions as surety for faithful performance under the terms and conditions of the contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond. The Performance Bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent.

Acknowledgement and agreement is given by both parties that the amount herein set for the Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of this Agreement by the Contractor.

**4.02 INSURANCE:** If the Contractor is required to go on to City property to perform work or services as a result of ITB award, the Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City or specified in Special Conditions.

The Contractor shall provide to the Procurement Services Division original certificates of coverage and receive notification of approval of those certificates by the City's Risk Manager prior to engaging in any activities under this contract. The Contractor's insurance is subject to the approval of the City's Risk Manager. The certificates must list the City as an ADDITIONAL INSURED for General Liability Insurance, and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the City's Risk Manager if circumstances change or adequate protection of the City is not presented. Bidder, by submitting the bid, agrees to abide by such modifications.

## **PART V PURCHASE ORDER AND CONTRACT TERMS:**

- 5.01 COMPLIANCE TO SPECIFICATIONS, LATE DELIVERIES/PENALTIES:** Items offered may be tested for compliance to bid specifications. Items delivered which do not conform to bid specifications may be rejected and returned at Contractor's expense. Any violation resulting in contract termination for cause or delivery of items not conforming to specifications, or late delivery may also result in:
- Bidders name being removed from the City's bidder's mailing list for a specified period and Bidder will not be recommended for any award during that period.
  - All City Departments being advised to refrain from doing business with the Bidder.
  - All other remedies in law or equity.
- 5.02 ACCEPTANCE, CONDITION, AND PACKAGING:** The material delivered in response to ITB award shall remain the property of the Seller until a physical inspection is made and the material accepted to the satisfaction of the City. The material must comply fully with the terms of the ITB, be of the required quality, new, and the latest model. All containers shall be suitable for storage and shipment by common carrier, and all prices shall include standard commercial packaging. The City will not accept substitutes of any kind. Any substitutes or material not meeting specifications will be returned at the Bidder's expense. Payment will be made only after City receipt and acceptance of materials or services.
- 5.03 SAFETY STANDARDS:** All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupation Safety and Health Act of 1970 as amended, and be in compliance with Chapter 442, Florida Statutes. Any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of this order must be accompanied by a completed Safety Data Sheet (SDS).
- 5.04 ASBESTOS STATEMENT:** All material supplied must be 100% asbestos free. Bidder, by virtue of bidding, certifies that if awarded any portion of the ITB the bidder will supply only material or equipment that is 100% asbestos free.
- 5.05 OTHER GOVERNMENTAL ENTITIES:** If the Bidder is awarded a contract as a result of this ITB, the bidder may, if the bidder has sufficient capacity or quantities available, provide to other governmental agencies, so requesting, the products or services awarded in accordance with the terms and conditions of the ITB and resulting contract. Prices shall be F.O.B. delivered to the requesting agency.
- 5.06 VERBAL INSTRUCTIONS PROCEDURE:** No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the Contractor, will be recognized by the City as duly authorized expressions on behalf of Contractors.
- 5.07 INDEPENDENT CONTRACTOR:** The Contractor is an independent contractor under this Agreement. Personal services provided by the Proposer shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, procurement policies unless otherwise stated in this ITB, and other similar administrative procedures applicable to services rendered under this contract shall be those of the Contractor.
- 5.08 INDEMNITY/HOLD HARMLESS AGREEMENT:** The Contractor agrees to protect, defend, indemnify, and hold harmless the City of Fort Lauderdale and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities of every and any kind including attorneys fees, in connection with or arising directly or indirectly out of the work agreed to or performed by Contractor under the terms of any agreement that may arise due to the bidding process. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable Statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.
- 5.09 TERMINATION FOR CAUSE:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the City may upon written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.
- 5.10 TERMINATION FOR CONVENIENCE:** The City reserves the right, in its best interest as determined by the City, to cancel contract by giving written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.
- 5.11 CANCELLATION FOR UNAPPROPRIATED FUNDS:** The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.
- 5.12 RECORDS/AUDIT:** The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The Contractor agrees to make available to the City Auditor or designee, during normal business hours and in Broward, Miami-Dade or Palm Beach Counties, all books of account, reports and records relating to this contract should be retained for the duration of the contract and for three years after the final payment under this Agreement, or until all pending audits, investigations or litigation matters relating to the contract are closed, whichever is later.

- 5.13 PERMITS, TAXES, LICENSES:** The successful Contractor shall, at their own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under this contract.
- 5.14 LAWS/ORDINANCES:** The Contractor shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this contract.
- 5.15 NON-DISCRIMINATION:** There shall be no discrimination as to race, sex, color, creed, age or national origin in the operations conducted under this contract.
- 5.16 UNUSUAL CIRCUMSTANCES:** If during a contract term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either party of the contract occur, and those circumstances significantly affect the Contractor's cost in providing the required prior items or services, then the Contractor may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Contractor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:
1. The contract can be canceled by the City upon giving thirty (30) days written notice to the Contractor with no penalty to the City or Contractor. The Contractor shall fill all City requirements submitted to the Contractor until the termination date contained in the notice.
  2. The City requires the Contractor to continue to provide the items and services at the firm fixed (non-adjusted) cost until the termination of the contract term then in effect.
  3. If the City, in its interest and in its sole opinion, determines that the Contractor in a capricious manner attempted to use this section of the contract to relieve themselves of a legitimate obligation under the contract, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Contractor in default and disqualifying him for receiving any business from the City for a stated period of time.
- If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Contractor receives notice in writing signed by a person authorized to bind the City in such matters.
- 5.17 ELIGIBILITY:** If applicable, the Contractor must first register with the Department of State of the State of Florida, in accordance with Florida State Statutes, prior to entering into a contract with the City.
- 5.18 PATENTS AND ROYALTIES:** The Contractor, without exception, shall indemnify and save harmless the City and its employees from liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, including its use by the City. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.
- 5.19 ASSIGNMENT:** Contractor shall not transfer or assign the performance required by this ITB without the prior written consent of the City. Any award issued pursuant to this ITB, and the monies, which may become due hereunder, are not assignable except with the prior written approval of the City Commission or the City Manager or City Manager's designee, depending on original award approval.
- 5.20 LITIGATION VENUE:** The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida.
- 5.21 LOCATION OF UNDERGROUND FACILITIES:** If the Contractor, for the purpose of responding to this solicitation, requests the location of underground facilities through the Sunshine State One-Call of Florida, Inc. notification system or through any person or entity providing a facility locating service, and underground facilities are marked with paint, stakes or other markings within the City pursuant to such a request, then the Contractor, shall be deemed non-responsive to this solicitation in accordance with Section 2-184(5) of the City of Fort Lauderdale Code of Ordinances.
- 5.22 PUBLIC AGENCY CONTRACTS FOR SERVICES:** if applicable, for each public agency contract for services, Contractor is required to comply with F.S. 119.0701, which includes the following:
- a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
  - (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
  - (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
  - (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

## BUSINESS ASSOCIATE AGREEMENT

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Fort Lauderdale, a Florida municipality (hereinafter referred to as the "Covered Entity" or "City") and U.S. HealthWorks Medical Group of Florida, Inc., a Florida corporation, (hereinafter referred to as "Business Associate").

WHEREAS, the Covered Entity and the Business Associate have established a business relationship in which Business Associate, acting for or on behalf of Covered Entity, receives Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 ("Act"); and

WHEREAS, the Covered Entity and the Business Associate desire to comply with the requirements of the Act's Privacy Rule as further set out below.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Covered Entity and the Business Associate agree as follows:

### 1. Definitions

a. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy and Security Rules ("Privacy Rule"), as codified in 45 Code of Federal Regulations Parts 160 through 164, as may be amended.

### 2. Obligations and Activities of Business Associate

a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

e. Business Associate agrees to ensure that any agent or subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

f. Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524, if the Business Associate has Protected Health Information in a Designated Record Set.

g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual, in a reasonable time and manner, if Business Associate has Protected Health Information in a Designated Record Set, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.

h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

j. Business Associate agrees to provide to Covered Entity or an Individual, within thirty (30) days of receipt of a written request from the Covered Entity or an Individual, information collected in accordance with Section 2.i of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

k. Sections 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations, shall apply to Business Associate in the same manner that such sections apply to Covered Entity.

l. Business Associate shall comply with the privacy, security, and security breach notification provisions applicable to a business associate pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act which is Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), 42 U.S.C.A. §17921 *et seq.* (2014), as may be amended or revised, ("HITECH"), any regulations promulgated thereunder, and any amendments to the Privacy Rule, all of which are hereby incorporated herein by reference.

### 3. Permitted Uses and Disclosures by Business Associate

a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement between City of Fort Lauderdale and U.S. Healthworks Medical Group of Florida, Inc., for Occupational Medical, Drug and Alcohol Testing Programs dated \_\_\_\_\_, 2015, ("Original Contract"), provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

### 4. Specific Use and Disclosure Provisions

a. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

e. Business Associate may use Protected Health Information to deidentify the information in accordance with 45 C.F.R. 164.514(a)-(c).

f. Business Associate may use Protected Health Information as required by law.

g. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.

h. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth above.

## 5. Obligations of Covered Entity

a. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

c. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

## 6. Permissible Requests by Covered Entity

a. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except that Business Associate may use or disclose Protected Health Information for data aggregation or management and administrative activities of Business Associate if required by the terms of the Original Contract.

## 7. Term and Termination

a. The Term of this Agreement shall be effective as of the effective date of the Original Contract, and shall terminate when the Original Contract terminates. Upon termination, all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, shall be destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, or if it is illegal to destroy Protected Health Information, the protections are extended to such information, in accordance with the termination provisions in this Section.

b. Upon either party's knowledge of a material breach by the other party, the nonbreaching party shall either:

1. Provide an opportunity of at least thirty (30) days for the breaching party to cure the breach or end the violation and terminate this Agreement and the Original Contract if the breaching party does not cure the breach or end the violation within the time specified by the nonbreaching party;

2. Immediately terminate this Agreement and the Original Contract if the breaching party has breached a material term of this Agreement and cure is not possible; or

3. If neither termination nor cure is feasible, the nonbreaching party shall report the violation to the Secretary.

### c. Effect of Termination

1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return, or destroy, except as prohibited by the Florida public records law, all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

2. In the event that Business Associate's return or destruction of the Protected Health Information would be infeasible or illegal, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible or illegal, for so long as Business Associate maintains such Protected Health Information. Upon written request from the Covered Entity, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible or illegal. At all

times Business Associate shall comply with the Florida public records law and exemptions therefrom, and applicable Florida records retention requirements.

8. Miscellaneous

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

b. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. If the parties are unable to reach agreement regarding an amendment to this Agreement, either Business Associate or Covered Entity may terminate this Agreement upon ninety (90) days written notice to the other party.

c. The respective rights and obligations of Business Associate under Sections 7(c)(1) and 7(c)(2) of this Agreement shall survive the termination of this Agreement.

d. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

e. Business Associate shall indemnify, hold harmless, and defend at Business Associate's expense, counsel being subject to Covered Entity's approval, the Covered Entity, and the Covered Entity's officers and employees (collectively "indemnitees"), against any and all claims, actions, lawsuits, damages, losses, liabilities, judgments, fines, penalties, costs, and expenses incurred by any of the indemnitees arising out of or in connection with Business Associate's or any of Business Associate's officers', employees', agents', or subcontractors' breach of this Agreement or any act or omission by Business Associate or by any of Business Associate's officers, employees, agents, or subcontractors, including Business Associate's failure to perform any of its obligations under the Privacy Rule. Business Associate shall pay any and all expenses, fines, judgments, and penalties, including court costs and attorney fees, which may be imposed upon any of the indemnitees resulting from or arising out of Business Associate's or any of Business Associate's officers', employees', agents', or subcontractors' breach of this Agreement or other act or omission.

f. Venue for any lawsuit or any other legal proceedings brought by either party against the other party or otherwise arising out of this Agreement, shall be in Broward County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida, with appellate jurisdiction in the respective corresponding appellate tribunals.

g. Notwithstanding anything contained in this Agreement to the contrary, except as otherwise provided by federal law, Business Associate shall:

(1) Keep and maintain public records that ordinarily and necessarily would be required by Covered Entity in order to perform the Services.

(2) Provide the public with access to public records on the same terms and conditions that Covered Entity would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2014), as may be amended or revised, or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(4) Meet all requirements for retaining public records and transfer, at no cost, to Covered Entity, all public records in possession of Business Associate upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to Covered Entity in a format that is compatible with Covered Entity's information technology systems.

IN WITNESS WHEREOF, the City of Fort Lauderdale and Choicelinx Corporation execute this Business Associate Agreement as follows:

ATTEST:

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
Jonda K. Joseph, City Clerk

By: \_\_\_\_\_  
John P. "Jack" Seiler, Mayor

By: \_\_\_\_\_  
Lee R. Feldman, City Manager

Approved as to form:

\_\_\_\_\_  
City Attorney

WITNESSES:

U.S. HEALTHWORKS MEDICAL GROUP OF  
FLORIDA, INC.

\_\_\_\_\_  
(Signature)  
Print Name:

By \_\_\_\_\_  
Print Name:  
President

\_\_\_\_\_  
(Signature)  
Print Name:

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_  
Print Name:  
Secretary

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing Business Associate Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_ as president for U.S. Healthworks Medical Group of Florida, Inc., a Florida corporation.

(SEAL)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
(Signature of Notary Public - State of \_\_\_\_\_)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary  
Public)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_