

AGREEMENT

THIS AGREEMENT is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 N.W. 1st Avenue, Delray Beach, FL 33444 and Craig B. Kushnir D.O., LLC, a Florida Limited Liability Company (hereinafter referred to as "Medical Director"), whose address is 3817 Regency Cir S, Boca Raton, FL 33496, this ____ day of _____, 202__.

WHEREAS, the City needs to procure Medical Director services; and

WHEREAS, pursuant to Section B. viii. of the City's Purchasing Policies and Procedures Manual's Purchasing Organization and Authority Exceptions, medical services are expressly exempt from the competitive procurement process; and

WHEREAS, the City desires to obtain these services from Medical Director utilizing the medical services exemption; and

WHEREAS, Medical Director agrees to provide these services to the City in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

ARTICLE 1 **DEFINITIONS**

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Commission** -The City Commission of the City of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The City of Delray Beach Fire Chief. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Medical Director and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 **City Manager**- The administrative head of City appointed by the Commission.

- 1.5 **City Attorney-** The chief legal counsel for City appointed by the Commission.
- 1.6 **Project -** The Project consists of the services described in Article 2.

ARTICLE 2

SCOPE OF SERVICES

- 2.1 Medical Director shall perform all work identified in this Agreement and Exhibit A. The Scope of Services is a description of Medical Director's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Medical Director impractical, illogical, or unconscionable.
- 2.2 Medical Director acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 This contract is in full force and effect on October 1, 2022 and shall continue through September 30, 2025. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 All duties, obligations, and responsibilities of Medical Director required by this Agreement shall be completed within the contract term after full contract execution by the City. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.
- 3.3 In the event services are scheduled to end due to the expiration of this Agreement, the Medical Director agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than six months beyond the term of the Agreement. The Medical Director shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement, as amended. The Purchasing and Contract Administration Division of the City shall notify Medical Director of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

ARTICLE 4

COMPENSATION

4.1 City will pay Medical Director, in the manner specified in Section 4.2, the total amount of Four Thousand Three Hundred Seventy (\$4370.00) dollars per month for work actually performed and completed pursuant to this Agreement, which amounts shall be accepted by Medical Director as full compensation for all such work and expenses. Medical Director acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Medical Director for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Medical Director's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

4.2 Method of Billing and Payment

4.2.1 Medical Director 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 is 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. Medical Director shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers.

4.2.2 City shall pay Medical Director within thirty (30) calendar days of receipt of Medical Director's proper invoice, or as required by Florida Law. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and paid within thirty (30) days following receipt of payment of retained amounts from City.

4.3 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.

4.4 Payment shall be made to Medical Director at:

Craig B. Kushnir, D.O., LLC.
3817 Regency Cir. S.
Boca Raton, FL 33496

ARTICLE 5
INDEMNIFICATION

Medical Director shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by Medical Director or its employees, agents, servants, partners, principals, or subcontractors. Medical Director shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. Medical Director expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Medical Director shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided the obligations of this section shall survive the term of this Agreement.

ARTICLE 6
INSURANCE

- 6.1 Medical Director shall maintain, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit B in accordance with the terms and conditions stated in this Article.
- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Medical Director shall name City as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is City of Delray Beach, Florida. This official title shall be used in all insurance documentation.
- 6.3 Within ten (10) days of notification of award, Medical Director shall provide to City proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. City reserves the right to obtain a certified copy of any policies required by the Article upon request. Coverage is not to cease and is to remain in force until the City determines all performance required of Medical Director is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit C. City shall be notified of any restriction

or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to City upon expiration.

- 6.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.
- 6.5 If Medical Director uses a subconsultant or subcontractor, Medical Director shall ensure that each subconsultant or subcontractor names "City of Delray Beach, Florida" as an additional insured under the subconsultant's or subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

ARTICLE 7

TERMINATION

- 7.1 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 receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the City. Termination for convenience by the City shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City upon such notice as the City deems appropriate under the circumstances in the event the City determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Medical Director's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Medical Director is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Medical Director provides a false certification submitted pursuant to Section 287.135, Florida Statutes.
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City, which the City deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the

"NOTICES" section of this Agreement.

- 7.4 In the event this Agreement is terminated for convenience, Medical Director shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Medical Director acknowledges that it has received good, valuable, and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Medical Director, for City's right to terminate this Agreement for convenience.
- 7.5 In the event this Agreement is terminated for any reason, any amounts due Medical Director shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

ARTICLE 8

NON-DISCRIMINATION

No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression, or veteran or service member status in the performance of this Agreement. Failure by Medical Director to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under applicable law, with all of such remedies being cumulative.

Medical Director shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Medical Director shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Medical Director shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Medical Director shall take affirmative steps to prevent discrimination in employment against disabled persons.

ARTICLE 9

MISCELLANEOUS

- 9.1 Rights In Documents and Work

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, and, if a copyright is claimed, Medical Director 'grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Medical Director, whether finished or unfinished, shall become the property of City and shall be delivered by Medical Director to the Contract Administrator within eight (8) days of termination of this Agreement by either party. Any compensation due to Medical Director shall be withheld until all documents are received as provided herein.

9.2 Public Records

IF MEDICAL DIRECTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE MEDICAL DIRECTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

- a. Medical Director shall comply with public records laws, specifically to:
 - i. Keep and maintain public records required by the City to perform the service.
 - ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if Medical Director does not transfer the records to the City.
 - iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Medical Director or keep and maintain public records required by the City to perform the service. If Medical Director transfers all public records to the City upon

completion of the Agreement, Medical Director shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Medical Director keeps and maintains public records upon completion of the Agreement, Medical Director shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

v. If Medical Director does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

9.3 Audit Rights and Retention of Records

City shall have the right to audit the books, records, and accounts of Medical Director and its subcontractors that are related to this Project. Medical Director and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Medical Director 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, Medical Director or its subcontractor, as applicable, shall make same available at nocost to City in written form.

Medical Director 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, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of five (5) 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 five (5) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. 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.

9.4 Truth-In-Negotiation And Representation

Medical Director's compensation under this Agreement is based upon representations supplied to City by Medical Director, and Medical Director certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

9.5 Public Entity Crime Act

Medical Director represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and 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 City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty- six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Medical Director further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Medical Director has been placed on the convicted vendor list.

9.6 Independent Contractor

- a. This Agreement does not create an employer/employee relationship between the parties. Medical Director is not entitled to any benefits paid to City employees. It is the intent of the parties that under this Agreement, an independent consultant is not an employee of the City for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance Law.
- b. Medical Director shall be responsible for all taxes of any kind. An IRS W- 2 form will not be provided. The City will provide an IRS Form 1099 required by law. Medical Director recognizes that no Federal Income Tax or Social Security will be withheld. However, if Medical Director requests in writing that Federal Income tax be withheld, the City will deduct the Federal Income tax withheld and remit to the IRS.

9.7 Third Party Beneficiaries

Neither Medical Director nor City intends to benefit a third party directly or substantially by this Agreement. Therefore, the Parties acknowledge 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.

9.8 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:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

With copy to:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney

For Medical Director:

Craig B. Kushnir, D.O.
3817 Regency Circle S.
Boca Raton, FL 33496
Email: kushnir@mydelraybeach.com

9.9 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. In addition, Medical Director shall not subcontract any portion of the work

required by this Agreement, except as may be specifically provided for herein. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Medical Director of this Agreement or any right or interest herein without City's written consent.

Medical Director 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 and that this is a Professional Services Contract, therefore Medical Director's employees and/or subcontractors that will perform pursuant to this Agreement shall be limited to Craig B. Kushnir D.O., as the primary Medical Director and an Associate Medical Director, who will be the backup physician in the event that Medical Director is unavailable. When Medical Director and the Associate Medical Director are both unavailable, Medical Director shall appoint a back-up physician to be used for online medical control and must be pre-approved by the Chief of Operations.

Medical Director shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Medical Director'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.

- 9.10 While Medical Director shall conform to standards and policies of the City of Delray Beach, the Medical Director shall have sole control of the work and the manner in which it is performed.

9.11 Conflicts

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

None of Medical Director's 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 Medical Director is not a party, unless compelled by court process. Further, 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 process. The limitations of this section shall not preclude Medical Director 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 Medical Director is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Medical Director shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Medical Director.

Medical Director shall be free to contract for similar services to be performed for other entities or persons while under contract with the City so long as they are not in conflict with the services provided to City under this Agreement. The provision of services provided for herein is non-exclusive.

9.13 E-verify

By entering into this Agreement Contractor acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Contractor affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Contractor, the Contractor may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Contractor.

9.14 Materiality and Waiver of Breach

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and 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.

9.15 Compliance With Laws

Medical Director 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.

9.16 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 unless City or Medical Director elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

9.17 Joint Preparation

The Parties and their counsel have participated fully in the drafting 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.

9.18 Interpretation

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

9.19 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 Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.20 Law, 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. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs. BY ENTERING INTO THIS AGREEMENT, MEDICAL DIRECTOR AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

9.21 Amendments

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. 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 and Medical Director or others delegated authority to or otherwise authorized to execute same on their behalf.

9.22 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. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.23 Payable Interest

- a. Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Medical Director waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.
- b. Rate of Interest. In any instance where the prohibition or limitations of Section 9.23 a. are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

9.24 Incorporation By Reference

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. All Exhibits are incorporated into and made a part of this Agreement.

9.25 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.

9.26 Multiple Originals

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

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IN WITNESS WHEREOF, the City and Medical Director executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

MEDICAL DIRECTOR

By: Craig Kushner, D.O.

Print Name: Craig Kushner

Title: Medical Director



STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 12th day of September, 2024, by Craig Kushner (name of person), as Medical Director (type of authority) for City of Delray Beach (name of party on behalf of whom instrument was executed).

Personally known ☒ OR Produced Identification ☐
Type of Identification Produced _____

Cecelia L. Shade
Notary Public – State of Florida



EXHIBIT A
SCOPE OF SERVICES

- A. Medical Director, shall perform all services required of a Medical Director, and assume all legal duties and responsibilities of a Medical Director, as provided for by Section 401.265, Florida Statutes, Chapter 64J-1 F.A.C., and any other applicable laws, regulations and rules of any governmental agency implementing said chapter; and any other duties upon written notice from the Florida Department of Health that such additional duties are required of the Medical Director, and as may be amended from time to time.
- B. Medical Director shall provide all labor, materials, supplies and equipment necessary to provide the required services.
- C. As required by Section 401.265 Florida Statutes and Rule 64J-1.004, F.A.C., Medical Director shall supervise and assume direct responsibility for the medical performance of all emergency medical technicians (EMTs) and paramedics operating for the Delray Beach Fire Rescue (Department).
- D. Medical Director shall be knowledgeable with the standards as set by the National Fire Protection Association Standard 1581: Standard on Fire Rescue Department Infection Control.
- E. Medical Director shall have a working knowledge of the Incident Command System and shall have a period of one (1) year to obtain NIMS IS-100, IS- 200, IS-700, and IS-800 to meet NIMS compliance.
- F. Medical Director shall develop, review, and authorize use of Advance Life Support (ALS), Basic Life Support (BLS), and inter-facility protocols which allow personnel to properly manage medical emergencies, consistent with Chapter 401, Florida Statutes, and Chapter 64J-1, F.A.C., as may be amended from time to time. Such protocols shall be specific in nature and shall provide for managing immediately life-threatening medical emergencies.
- G. At City's request, Medical Director shall develop, assist in the development, and review any other protocols, policies, and procedures as they relate to emergency medical service personnel and the delivery of emergency medical services.
- H. Medical Director shall attend monthly EMS Provider meetings coordinated by the Association of EMS Providers.
- I. Medical Director shall be required to attend other meetings, when requested by City.
- J. Medical Director shall meet with the EMS Chief, for a minimum of two hours bi-weekly. Meeting agendas will be prepared by the Chief of EMS, or his designee. Rotational subject matter for each agenda may include, but not be limited to: CQI (Continuous Quality Improvement), training agenda/implementation, infection control, ePCR/documentation, generalized progress/development and protocol progress/development.

- K. Medical Director may ride with Supervisors and/or rescue units to evaluate emergency medical personnel skills and to maintain a working relationship with EMTs and paramedics. During the scheduled ride time, Medical Director shall provide hands-on training to firefighter EMTs and paramedics applicable to items encountered on calls and topics that correspond with the predetermined training agenda. This ride time scheduling shall be coordinated by the Chief of EMS, or designee, on a rotational basis within the battalions.
- L. Medical Director shall supervise the implementation and maintenance of a Continuous Quality Improvement Program as required by section 401.265 Florida Statutes and Rule 64J-1.004 F.A.C., to include auditing medical reports, as referenced in the Continuous Quality Improvement department policy, for completion and correctness. The Continuous Quality Improvement Program must cover paramedics and EMTs.

- M. Medical Director shall actively and cooperatively participate in the Department Continuous Quality Improvement Program, including the review and development process.
- N. As part of the Continuous Quality Improvement Program, Medical Director shall assist the Department in obtaining patient outcome information from local hospitals.
- O. Medical Director shall provide the Department with a detailed monthly report of all activities performed, including those of the Associate Medical Director and with reference to the requirements of the Agreement. City shall provide administrative support in order for the Medical Director to meet the obligations of this paragraph.
- P. Medical Director shall, upon request of the Department Training Division, evaluate Delray Beach Fire Rescue EMTs and Paramedics during training exercises and the recruit paramedic Supervised Training & Evaluation Program (STEP).
- Q. Medical Director shall review and approve the content of EMS training, including but not limited to Department Advanced Cardiac Life Support (ACLS), International Trauma Life Support (ITLS), Pediatric Advanced Life Support (PALS), Neonatal Resuscitation Program (NRP) and Pre-Hospital Trauma Life Support (PHTLS) classes, for medical correctness at the request of the Chief of EMS or Chief of Training.
- R. At the request of the Department Division Chief of Training, or his designee, Medical Director shall review and approve EMT and Paramedic continuing medical education credit provided by the Department.
- S. Medical Director shall attend a minimum of two (2) equipment/vendor review sessions annually and participate in the hands-on activities involved in the equipment review process. All equipment review will be determined by the EMS Chief. Equipment review is a cooperative initiative through which Medical Director is encouraged to introduce new ideas and equipment for evaluation and discussion.
- T. Medical Director shall ensure that training is provided following any changes in the EMS Protocols or medical equipment implementation or usage.
- U. Medical Director shall participate in the development and further education of Department personnel by bringing in educational components that meet the Department Training Division's goals.
- V. Medical Director shall review and provide written affirmation of recertification training of Department EMT and Paramedic personnel in accordance with Section 401.2715(3), Florida Statutes.

- W. Medical Director shall participate in the development of the STEP probationary Paramedic program, as well as the EMS portion of the Recruit orientation, on an as-needed basis determined by the Department EMS and Training Divisions. At a minimum, Medical Director shall attend at least one orientation with each new recruit class and recruit paramedic Step program.
- X. Medical Director shall be available via radio or telephone communication on a 24 hour a day, 7 days per week basis for online medical control. Notwithstanding anything to the contrary contained herein, Medical Director may use reasonable discretion in determining whether to respond to an incident scene.
- Y. It shall be the obligation of Medical Director to contract for the professional services of an Associate Medical Director for the duration of this Agreement, to assist Medical Director in providing medical control for the Department, and to act as back-up medical director when Medical Director is unavailable. No additional fees are allowed for the Associate Medical Director.
1. The Associate Medical Director shall meet all the qualifications specified in this Scope of Work for a Medical Director as set forth in Rule 64J-1.004 F.A.C. and Section 401.265, Florida Statutes, and shall be approved by City's Fire Chief, Chief of Operations and EMS Chief prior to being appointed by Medical Director and commencing services. Medical Director shall be responsible for assuring that the Associate Medical Director meets the duties and requirements of the Associate Medical Director as set forth herein.
 2. Any change in the Associate Medical Director must likewise be approved by Department Fire Chief, Chief of Operations, and EMS Chief prior to being appointed by Medical Director.
 3. The Associate Medical Director shall comply with Exhibit A, items (C), (D), (J) and (K) at all times during this Agreement.
 4. In addition to the above duties and responsibilities, Medical Director will appoint the Associate Medical Director to act as back-up medical director when Medical Director is not available. When acting as back-up medical director, the Associate Medical Director shall be responsible for the services, duties and obligations set forth in Exhibit A, items (A) through (Y), except for Exhibit A, items (A), (B), (E), (F), (L), (O), and (R).
 5. In addition to the above duties and responsibilities, Medical Director may authorize the Associate Medical Director to assist Medical Director at any time with the duties and responsibilities set forth in Exhibit A, items (A) through (Y) of this Article, except for Exhibit A, items (A), (B), (O), and (R).
 6. The services of the Associate Medical Director shall be in addition to those performed by Medical Director under the Agreement and shall not relieve the Medical Director of the responsibility to also perform those duties identified in this Article, as well as all other duties established by the Agreement and any applicable laws and regulations. The Associate Medical Directors performance is to

supplement Medical Director in providing medical control for the Department and does not in any way relieve Medical Director of the responsibilities and duties as the medical director for the Department.

7. Prior to contracting with the Associate Medical Director, Medical Director shall obtain the Chief of Operation's and EMS Chief approval of the contract and any amendments thereto, between Medical Director and the Associate Medical Director. All payments to the Associate Medical Director shall be the sole responsibility of Medical Director, and not City.

Z. When Medical Director and the Associate Medical Director are both unavailable, Medical Director shall appoint a back-up physician to be used for online medical control and must be pre-approved by the Chief of Operations.

1. Back-up physicians, when used, shall meet all the qualifications for a Medical Director as set forth in Rule 64J-1.004 F.A.C. and Section 401.265, Florida Statutes. No additional fees are allowed for the back-up physician.
2. All payments to the back-up physicians shall be the sole responsibility of Medical Director.
3. Medical Director will be allowed up to four (4) weeks of vacation, annually, during the term of the Agreement, during which time the Associate Medical Director or an approved back-up physician shall be available. Medical Director may request additional vacation time through the Fire Chief. Approval of additional vacation time is at the sole discretion of the Fire Chief.

AA. Medical Director shall be fully responsible to City for the performance of the Associate Medical Director and any back-up physicians. Medical Director shall promptly remedy any deficiency of performance by the Associate Medical Director and/or any back-up physicians. It is further understood and agreed between the parties to the Agreement that all of the legal duties and responsibilities of a Medical Director as set forth in Chapter 401, Florida Statutes, Rule 64J-1.004 F.A.C., and any other applicable laws and regulations, shall remain with Medical Director, who shall remain fully and solely responsible to City for all such duties and responsibilities. It is also understood and agreed that Medical Director shall remain solely responsible for the services, duties and obligations set forth in Exhibit A, items (A), (B), (N), and (Q) of this Article and may not utilize the Associate Medical Director or back-up physician to comply with these services, duties and obligations.

BB. Active participation in Local and Statewide EMS organizations as referenced in the handbook for EMS Medical Director's (March 2012 FEMA), shall be documented by Medical Director, reporting outcomes to the EMS Chief at monthly staff meetings.

CC. Additionally, Medical Director shall:

1. Provide liaison services as required and requested between the Department and other departments, divisions, boards and bodies of City, the County, or the State, as well as educational, governmental, or medical agencies or institutions relating to the provision of Emergency Medical Services.

2. Retain the ultimate authority to permit or deny any paramedic or EMT the utilization of BLS and ALS techniques, patient assessments, and patient stabilization procedures.
3. Upon request, Medical Director shall advise the Fire Chief, Operations Chief, and/or EMS Chief on disciplinary recommendations relating to medical care.
4. Serve as the Department's Physician for the purpose of providing advice, recommendations, and consultation to the Fire Chief in matters pertaining to occupational safety and health issues.
5. Maintain an active membership in the State Association of EMS Medical Directors.

[Remainder of page intentionally left blank.]

EXHIBIT B
INSURANCE REQUIREMENTS

- A. Medical Director shall secure and maintain, at his own expense, and keep in effect during the full term of this Agreement, a policy or policies of insurance which must include the following coverage and minimum limits specially reflecting and including coverage for all acts, activities and omissions in any way arising out of the planning or operation of the services.
- B. Comprehensive General Liability (occurrence form) with the following minimum limits of liability with no restrictive endorsements:
1. \$1,000,000.00 - Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence.
 2. Coverage shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:
 - a. Premises and Operations;
 - b. Product and Completed Operations Liability;
 - c. Broad Form Property Damage;
 - d. Broad Form Contractual Coverage applicable to the Agreement and specifically confirming the indemnification and hold harmless.
- C. Medical Malpractice (occurrence form) with \$1,000,000.00 combined single limit per occurrence.

UPON EXECUTION OF THIS AGREEMENT, MEDICAL DIRECTOR SHALL SUBMIT TO THE CITY COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE CITY OF DELRAY BEACH IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGE.

- D. These insurance requirements shall not relieve or limit the liability of Medical Director. City does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect MEDICAL DIRECTOR'S interests or liabilities but are merely minimum requirements established by CITY's Risk Manager. CITY reserves the right to require any other insurance coverage that CITY deems necessary depending upon the risk of loss and exposure to liability.
- E. The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

- F. Medical Director shall require each of its sub-contractors of any tier to maintain the insurance required herein (except as respects limits of coverage for employers and public liability insurance which may not be less than One Million and 00/100 Dollars (\$1,000,000.00) for each category), and contractor shall provide verification thereof to City upon request of City.
- G. All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against City with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above-described insurance.
- H. Medical Director shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against City for payment or assessments in any form on any policy of insurance.
- I. The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which City is named as an additional named insured shall not apply to City. City shall provide written notice of occurrence within fifteen (15) working days of City's actual notice of such an event.
- J. Medical Director shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved.
- K. Medical Director agrees to perform the work under this Agreement as an independent contractor, and not as a sub-contractor, agent, or employee of City.
- L. Notwithstanding the above requirements, if the Risk Manager of the City has determined in advance that Medical Director cannot obtain insurance as described herein, a separate document entitled "Waiver, Release, and Hold Harmless Agreement" and "City of Delray Beach Release of Any and All Workers' Compensation Claims" must be executed by Medical Director in addition to this Agreement.