

ANNUAL FIREFIGHTER PHYSICALS AGREEMENT

THIS ANNUAL FIREFIGHTER PHYSICALS AGREEMENT (the "Agreement") is entered into as of the Effective Date (defined in Section 1, below) between Polk County (the "County"), a political subdivision of the State of Florida, by and through its Board of County Commissioners, 330 West Church Street, Bartow, Florida 33830, and Life Extension Clinics, Inc., a Florida corporation (the "Vendor"), 1011 N. Macdill Avenue, Tampa, FL 33607.

WHEREAS, the County desires to retain the services of a competent and qualified company to perform annual physicals for the County's firefighters and to furnish those services and perform those tasks (collectively, the "Services") as further described in the RFP (hereinafter defined); and

WHEREAS, the County has solicited for the Services via an advertised request for proposals and has received two responsive proposals thereto; and

WHEREAS, after review and consideration of all responsive proposals, the County intends to engage the Vendor to provide the Services; and

WHEREAS, the Vendor remains agreeable to providing the County the Services and represents that it is competent, qualified, capable, and prepared to do so according to the terms and conditions stated herein;

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, the County and the Vendor hereby agree, as follows:

1.0 Effective Date; Term

1.1 This Agreement shall commence on the date (the "Effective Date") of its execution by the County.

1.2 The initial term of this Agreement shall be for three (3) fiscal years, commencing on the Effective Date and continuing through September 30, 2015. This Agreement will automatically renew for two (2) one (1) fiscal year periods thereafter at the same terms and conditions unless otherwise terminated in accordance with the terms and conditions stated herein.

1.3 The initial term, together with all exercised renewal terms, are collectively the "Term" of the Agreement.

1.4 Polk County's fiscal year runs from October 1st through September 30th. The first fiscal year period for this agreement is FY12/13, which ends on September 30, 2013. Due to this agreement being entered into in August 2013, the first year of service delivery will be extended into the beginning of FY13/14 in order to ensure all physicals can be completed. This will mean that for FY13/14, some firefighters may receive two physicals in order to align with the service delivery plan.

2.0 Vendor Services

2.1 The County does hereby retain the Vendor to furnish the Services as further described in (i) the County's Request for Proposals RFP #13-407, to include all attachments and addenda, and (ii) in the Vendor's responsive proposal thereto (collectively, the "RFP"), all of which are incorporated into this Agreement by this reference. A complete copy of the Scope of Services section of the RFP and Vendor's responsive proposal are attached as a composite Exhibit "A" and made a part of this Agreement.

3.0 Compensation

3.1 In consideration for providing the Services, the County shall pay the Vendor an amount equal to the costs identified on the Vendor Cost page of Vendor's submittal.

3.2 When issuing invoices to the County, the Vendor should provide proof that the reporting requirements of the RFP have been met. The Vendor's invoice must reference this Agreement and be submitted on a County approved form.

3.3 The County's acceptance of any invoice or statement shall not constitute evidence of the County's acceptance of the Vendor's performance of the Services or its acceptance of any work.

3.4 The Vendor's project manager or designated payroll officer shall, by affidavit, attest to the correctness and accuracy of all charges stated in each invoice and statement delivered to the County.

4.0 Vendor's Responsibilities

4.1 The Vendor shall be responsible for the professional quality, accuracy, competence, methodology, and the coordination of all Services performed pursuant to this Agreement.

4.2 The Vendor shall also be responsible for relevant provisions of any other applicable rule, regulation, statute, ordinance, or order which may pertain to the delivery of the Services.

4.3 The County's review, approval, acceptance, or payment for any of the Vendor's Services shall not be construed to: (i) operate as a waiver of any rights the County possesses under this Agreement; or (ii) waive or release any claim or cause of action arising out of the Vendor's performance or nonperformance of this Agreement. The Vendor shall be and will always remain liable to the County in accordance with applicable law for any and all damages the County incurs which are caused by the Vendor's negligent or wrongful performance or nonperformance of any of the Services to be furnished under this Agreement.

5.0 Ownership and Retention of Working Papers and Documents

All analyses, reference data, completed reports, or any other form of written instrument or document created or resulting from the Vendor's performance of the Services pursuant to this Agreement shall become the property of the Employee and/or the County as outlined in the RFP.

6.0 Termination

6.1 The County may terminate this Agreement, in whole or in part, at any time, either for the County's convenience or because of the failure of the Vendor to fulfill its obligations under this Agreement, subject to the cure period set forth in Section 26.0, by delivering written notice to the Vendor. Upon receipt of such notice, the Vendor shall:

6.1.1 Immediately discontinue all affected Services unless the notice directs otherwise; and

6.1.2 Deliver to the County all data, reports, summaries, and any and all such other information and materials of whatever type or nature as may have been accumulated by the Vendor in performing this Agreement, whether completed or in process.

6.2 Unless in dispute or subject to the County's right of set-off or other remedy, the Vendor shall be paid for Services actually rendered through the date of termination.

6.3 The rights and remedies of the County provided for in this Section 6 are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

7.0 No Contingent Fees

The Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Vendor to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award of or making of the Agreement. For the breach or violation of this provision, the County shall have the right to terminate the Agreement at its sole discretion, without liability, and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

8.0 Assignment

The Vendor shall not assign, transfer, or encumber this Agreement, or any interest herein, under any circumstances, without obtaining the prior written consent of the County, which consent may be withheld in the County's exercise of its reasonable discretion.

9.0 Professional Associates and Subcontractors

If the Vendor requires the assistance of any professional associates or subcontractors in connection with providing the Services, the Vendor must obtain the prior express written approval of the County, which the County may withhold in its discretion, before any such professional associate or subcontractor may perform any work for the County. If after obtaining the County's approval the Vendor utilizes any other professional associates or subcontractors in the delivery of the Services, then the Vendor shall remain solely and fully liable to the County for the performance or nonperformance of all such professional associates and subcontractors. The failure of the Vendor's professional associates or subcontractors to timely or properly perform any of their respective obligations to the Vendor shall not relieve the Vendor of its obligations to the County under this Agreement.

10.0 Indemnification of County

Vendor, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to County) protect and hold the County, and its officers, employees and agents harmless from, and against any and all, claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses, and expenses whatsoever (including, without limitation, attorneys' fees costs and expenses incurred during negotiation, through litigation and all appeals therefrom) including, without limitation, those pertaining to the death of or injury to any person, or damage to any property, arising out of or resulting from (i) the failure of Vendor to comply with

applicable laws, rules or regulations, (ii) the breach by Vendor of its obligations under this Agreement, (iii) the negligent acts, errors or omissions, or intentional or willful misconduct, of Vendor, its professional associates, agents, and employees; provided, however, that Vendor shall not be obligated to defend or indemnify the County with respect to any such claims or damages arising out of the County's sole negligence.

11.0 Insurance Requirements

The Vendor shall maintain at all times the following minimum levels of insurance and shall, without in any way altering its liability, obtain, pay for, and maintain insurance for the coverage and amounts of coverage not less than those set forth below. The Vendor shall provide the County original Certificates of Insurance satisfactory to the County to evidence such coverage before any work commences. The County shall be named as an additional insured on General and Automobile Liability policies. General Liability and Workers' Compensation policies shall contain a waiver of subrogation in favor of the County. The commercial General Liability Policy shall (by endorsement if necessary) provide contractual liability coverage for the contractual indemnity stated in Section 10, above. All insurance coverage shall be written with a company having an A.M. Best rating of at least the "A" category and size category of VIII. The Vendor's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the County. In the event of any failure by the Vendor to comply with the provisions of this Section 11, the County may, at its option, upon notice to the Vendor, suspend Vendor's performance of the Services for cause until there is full compliance. Alternatively, the County may purchase such insurance at the Vendor's expense, provided that the County shall have no obligation to do so and if the County shall do so, the Vendor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverage.

Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm)

Medical Professional Liability. \$1,000,000.00 per claim, \$2,000,000.00 aggregate on a per policy year on a claims made basis for bodily injuries, death, and personal injury resulting from any one occurrence. The occurrence date shall be retroactive to the date of the contract. Vendor Consultants shall be covered for any errors or omissions they may make in providing Services to firefighters.

Workers Compensation. The Vendor shall provide, pay for, and maintain workers compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

12.0 Public Entity Crimes

The Vendor understands and acknowledges that this Agreement will be void in the event the conditions stated in Florida Statutes, Section 287.133, relating to conviction for a public entity crime apply to the Vendor.

13.0 Non-Discrimination

The Vendor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

14.0 Vendor's Representatives

The Vendor shall designate or appoint one or more Vendor representatives who are authorized to act on behalf of and to bind the Vendor regarding all matters involving the conduct of its performance pursuant to this Agreement. The Vendor shall keep the County continually and effectively advised of Vendor's designated representatives.

15.0 Integration

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the

parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document or its designated exhibits. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

16.0 Modifications, Amendments or Alterations

No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless agreed to and executed in writing by both parties to this Agreement in a form acceptable to the County.

17.0 Independent Contractor

Nothing stated in this Agreement is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties, or as constituting the Vendor (including its officers, employees, and agents) as the agent, representative, or employee of the County for any purpose, or in any manner, whatsoever. The Vendor is to be and shall remain forever an independent contractor with respect to all Services performed under this Agreement. The Vendor shall have no right to speak for or bind the County in any manner.

18.0 Public Records Law

The Vendor acknowledges the County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, the Vendor will not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws, including, without limitation, the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

19.0 Compliance with Laws and Regulations

In providing all Services pursuant to this Agreement, the Vendor shall abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such Services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall

entitle the County to terminate this Agreement immediately upon delivery of written notice of termination to the Vendor.

20.0 Governing Law and Venue

This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Polk County, Florida or in the United States District Court, Middle District of Florida, located in Hillsborough County, Florida.

21.0 Notices

Whenever either party desires to give notice unto the other, it must be given by written notice, delivered (i) in person, (ii) via registered or certified United States mail, postage prepaid with return receipt requested, or (iii) via nationally recognized overnight delivery service, and addressed to the party for whom it is intended at the place last specified by each party. The place for giving of notice shall remain such until it is changed by written notice delivered in compliance with the provisions of this Section 21. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For County:

Bartow, Florida 33830
Attention: _____

For Vendor:

Life Extension Clinics, Inc.
1011 N. Macdill Avenue
Tampa, FL 33607
Attention: _____

22.0 Severability

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement; any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from

being void should a provision which is of the essence of the Agreement be determined to be void.

23.0 Annual Appropriations

Vendor acknowledges that during any fiscal year the County shall not expend money, incur any liability, or enter into any agreement which by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Accordingly, any agreement, verbal or written, the County may make in violation of this fiscal limitation is null and void, and no money may be paid on such agreement. The County may enter into agreements whose duration exceeds one year; however, any such agreement shall be executory only for the value of the services to be rendered which the County agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the County's performance and obligation to pay the Vendor under this Agreement is contingent upon annual appropriations being made for that purpose.

24.0 Unauthorized Aliens

The Vendor shall not employ or utilize unauthorized aliens in the performance of the Services provided pursuant to this Agreement. The County shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a) and a cause for the County's unilateral termination of this Agreement. When delivering executed counterparts of this Agreement to the County, the Vendor shall also deliver a completed and executed counterpart of the attached "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" form.

25.0 Vendor Representations

25.1 The Vendor hereby represents and warrants the following to the County:

25.1.1 Vendor is a corporation duly organized and existing in good standing under the laws of the State of Florida with full right and authority to do business within the State of Florida.

25.1.2 Vendor's performance under this Agreement will not violate or breach any contract or agreement to which the Vendor is a party or is otherwise bound, and will not violate any governmental statute, ordinance, rule, or regulation.

25.1.3 Vendor has the full right and authority to enter into this Agreement and to perform its obligations in accordance with its terms.

25.1.4 Vendor now has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

25.1.5 Vendor has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

25.1.6 Vendor has the personnel and experience necessary to perform all Services in a professional and workmanlike manner.

25.1.7 Vendor shall exercise the same degree of care, skill, and diligence in the performance of the Services as provided by a professional of like experience, knowledge and resources, under similar circumstances.

25.1.8 Vendor shall, at no additional cost to County, re-perform those Services which fail to satisfy the foregoing standard of care, the requirements and standards stated in Section 4.0, above, or which otherwise fail to meet the requirements of this Agreement.

25.1.9 Each individual executing this Agreement on behalf of the Vendor is authorized to do so.

26.0 Default and Remedy

If the Vendor materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the Vendor receives written notice of the default from the County, then the County shall have the right to (i) immediately terminate this Agreement by delivering written notice to the Vendor, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the County materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the County receives written notice of the default from the Vendor, then the Vendor shall have the right to immediately terminate this Agreement by delivering written notice to the County. Upon any such termination, then, unless in dispute or subject to the County's right of set-off or other remedy, the County shall pay the Vendor the full amount due and owing for all Services performed through the date of Agreement termination.

27.0 LIMITATION OF LIABILITY

IN NO EVENT, SHALL THE COUNTY BE LIABLE TO THE VENDOR FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT,

WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS CONTRACT BY THE COUNTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

28.0 Waiver

A waiver by either the County or the Vendor of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach of this Agreement. The making or acceptance of a payment by either party with the knowledge of the other party's existing default or breach of the Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.

29.0 Attorneys' Fees and Costs

Each party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

30.0 Force Majeure

The Vendor shall be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its nonperformance. An "Event of Force Majeure" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Within five (5) days after the occurrence of an Event of Force Majeure, the Vendor shall deliver written notice to the County describing the event in reasonably sufficient detail and how the event has precluded the Vendor from performing its obligations hereunder. The Vendor's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the Vendor to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the

Vendor shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period the Vendor shall keep the County duly notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

31.0 Key Personnel

The Vendor shall notify the County if any of the Vendor's Key Personnel (as defined, below) change during the Term of the Agreement. To the extent possible, the Vendor shall notify the County at least ten (10) days prior to any proposed change in its Key Personnel. At the County's request, the Vendor shall remove, without consequence to the County, any of the Vendor's contractors, sub-contractors, sub-consultants, agents or employees and replace the same with an appropriate substitute having the required skill and experience necessary to perform the Services. The County shall have the right to reject the Vendor's proposed changes in Key Personnel. The following individuals shall be considered "Key Personnel:"

Name: Patricia Johnson, CEO

Name: Tammy Torres, Dir.

Name: Elena Vazta, ARNP

Name: Jan Summers, ACSM
Pam Ward, RN MS

**(THE REMAINDER OF THE PAGE IS LEFT INTENTIONALLY BLANK;
THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE
WITH THE PARTIES' SIGNATURES.)**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ATTEST:

STACY M. BUTTERFIELD
CLERK OF THE BOARD

POLK COUNTY, a political subdivision
of the State of Florida

By: Kim Hancock
Deputy Clerk

By: Melony M. Bell
Melony Bell, Chairman,
Board of County Commissioners



Date Approved by Board: 8.20.13

Review as to form and legal sufficiency:

Sandra B. Howard 8/1/13
County Attorney's Office Date

VENDOR:

LIFE EXTENSION CLINICS, INC.
a Florida corporation

ATTEST:

By: [Signature]

By: Patricia Johnson

Michael Terrana

Print Name: Patricia Johnson

[Print Name]

Title: CEO

Date: 7/29/2013

SEAL