

**AGREEMENT FOR OCCUPATIONAL WELLNESS
ADMINISTRATOR AND SERVICES**

This Agreement for Occupational Wellness Administrator and Services ("Agreement") is made and entered into by and between Lexington Fayette Urban County Government ("LFUCG") and Urgent Treatment Clinics ("UTC") as of 1-1-13 ("Effective Date").

WHEREAS, LFUCG is a consolidated city and county government, which currently has over 3,000 employees, in addition to affiliated satellites with approximately 700 additional employees with Divisions that include Urban County Government including Finance, General Services, Social Services, Law, Public Safety, Public Works, and Water and Air Quality;

WHEREAS, LFUCG has an obligation to provide occupational health services to its employees and others that include pre-employment physicals, annual physicals, drug and alcoholic sample collection and testing, fit for duty examinations, hazardous materials workers examinations among other related occupational health services;

WHEREAS, UTC is a Professional Limited Liability Company engaged in the business of providing professional medical services and related clinical services in the occupational medicine area;

WHEREAS, UTC is an experienced provider of occupational health services including professional physician services, rehabilitation therapy services, diagnostic testing, physical evaluations, drug and alcohol testing, and hazardous material examinations as well as other medical and consultative services consistent with occupational health needs of employers for their employees and others;

WHEREAS, UTC is a Professional Limited Liability Company whose members and employees include physicians and clinical staff who are duly licensed by the appropriate state agency to practice medicine or to perform other health care services; and

WHEREAS, UTC desires to contract with LFUCG to provide occupational health services to its employees or other designated persons on the following terms and conditions.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, promises and undertakings herein and intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS.

When used in this Agreement, all capitalized terms shall have the following meanings:

1.1 **Covered Services** include health care services to be delivered to LFUCG Designates pursuant to this Agreement. A description of the occupational health and medical services to be provided is specified in Attachment A.

1.2 **LFUCG Designate** is an individual who is designated by the LFUCG to receive Covered Services.

2. **RELATIONSHIP OF THE PARTIES.**

2.1 **No Employment.** The Parties hereby enter into this Agreement with the express intent that the Parties are independently contracting parties. Nothing within this Agreement is intended to create an employment relationship between UTC and LFUCG. This Agreement does not create a partnership and, except as expressly set forth herein, neither Party is the agent of the other. Neither Party shall have the right to bind the other by contract or otherwise except as specifically provided for herein.

2.2 **No Discrimination.** UTC shall provide the services in a manner that does not discriminate on the basis of race, sex, religion, age, national origin, place of residence, health status, need for services, referral sources, ability to pay or source of payment for services rendered.

2.3 **No Illegal Remuneration.** The parties agree that the benefits hereunder do not require, are not payment for, and are not in any way contingent upon the referral or any other arrangement for the provision of any item or service, or the offer, solicitation, payment or receipt of illegal remuneration in violation of federal and state laws and regulations.

3. **QUALIFICATIONS, WARRANTIES, AND REPRESENTATIONS OF UTC.**

3.1 **Authority.** UTC represents that it employs experienced physicians and clinical staff that have the professional qualifications, licenses, and authority to provide occupational health services as delineated under this Agreement:

3.2 **Medical License.** UTC represents and warrants that its physician staff is duly licensed and in good standing to practice medicine in the Commonwealth of Kentucky and has obtained all appropriate certifications, licenses, or approvals to prescribe and dispense drugs under all applicable state and federal laws.

3.3 **Federal and State Healthcare Programs.** UTC represents and warrants that none of its staff have been sanctioned by or excluded from participation in any federal or state healthcare program.

3.4 **Compliance with Professional Standards.** UTC represents and warrants that services provided will be consistent with professional standards of care.

4. DUTIES OF UTC.

4.1 Duty to Provide Occupational Health Services. UTC shall provide covered services at locations in Fayette County to the LFUCG Designates when directed by the LFUCG. These covered services are specified in Attachment A.

4.2 Duty to Provide General Consulting Services: At the request of LFUCG, UTC shall provide general consulting services in the area of occupational health at no cost unless otherwise agreed by the Parties. These services may include analysis and review of current LFUCG practices and procedures related to occupational health as well as compliance with applicable government health and safety regulations, national standards established for specific occupations and/or federal, state, local or regulatory mandates, currently in effect or anticipated to become effective. These consulting services may include analysis of pre-employment medical examination protocol/ occupational health policies and procedures, specific job and safety analysis, as well as review of applicable medical standards and guidelines used by LFUCG. General Consulting Services may also include making recommendations for improvements in medical screening, employee occupational health related issues, and recommendations for compliance with legal requirements for screening and other health related services.

4.3 Duty to Provide Specific Consulting Services: The UTC shall provide specific consulting services on a project by project basis at the direction of the LFUCG. Specific consulting services shall be provided as agreed upon. The UTC shall provide a written report of findings and recommendations as directed by the LFUCG.

4.4 Duty to Maintain Reports and Records. The UTC shall prepare and maintain, or cause to be prepared and maintained, all reports, claims, correspondence, and records relating to all services rendered under this Agreement. The UTC further agrees to prepare and maintain, or cause to be prepared and maintained, all records, claims, correspondence, and reports relating to occupational health services in a manner satisfactory to the LFUCG. The UTC shall maintain medical records for all LFUCG Designates for whom covered services are provided.

4.5 Duty to Provide Services in Fayette County. The UTC will provide services during normal business hours Monday-Friday, with necessary urgent substance abuse testing services to be provided as needed on a twenty-four hour, seven days a week availability basis. Services locations will be in Fayette County, will be handicap accessible, and meet all Federal, State, and Local safety laws. UTC shall schedule appointments so that no one should wait longer than 45 minutes from the initial appointment time-before services are provided. All requested physical examination will be done within two working days of the initial request.

4.6 Duty to Provide Results. The UTC shall prepare and submit a written summary of medical examinations/test results to the LFUCG Division of Human

Resources or the LFUCG Liaison [as specified]. This summary will be accurate, legible, and comprehensible. All test results must be included with the summary as well.

4.7 Duty to Perform Services Consistent with Standards: The UTC shall perform medical examinations according to mandated industry and medical standards, and as agreed upon by the UTC and the LFUCG. Protocols shall be compliant with:

- a.) Rules of the Civil Service Commission;
- b.) The Americans with Disabilities Act of 1990;
- c.) Respective Union Contracts.

UTC's LFUCG shall have the right to revise and amend protocols as needed.

4.8 Duty to Maintain Employee Medical Records. The UTC shall maintain LFUCG's employees' medical records will maintain and store all medical records for the term of the Agreement at no additional cost; remain HIPAA compliant, and make every effort to maintain their security and protect from physical damage. Employee Medical Record shall include and are not limited to:

- Health Questionnaire
- All Test Results
- Proofs of Immunity
- Examination Results
- Physician Consultation
- Documentation substantiating medical necessity for additional testing, etc.

4.9 Duty to Bill and Report. The UTC shall provide a weekly report and invoice for all covered services provided to the LFUCG Designates. In addition, the UTC shall provide quarterly Experience Reports delineating services, charges, utilization, and outstanding balances.

5. DUTIES OF LFUCG.

5.1 Duty to Designate Liaison. The LFUCG shall designate in writing a Liaison who shall serve as the contact and communication point for services provided pursuant to this Agreement. The Liaison shall communicate to the UTC and to the LFUCG Designates who are authorized to receive covered services pursuant to this Agreement. The UTC shall communicate test results and required medical information to the Liaison.

5.2 Duty to Identify LFUCG Designates. The LFUCG shall identify the employees and other persons who are to receive covered services under this

Agreement. The LFUCG and the UTC shall develop a process by which the LFUCG communicates the identity of the LFUCG Designates and the covered services that are to be provided.

5.3 Duty to Obtain HIPAA Compliant Releases. The LFUCG shall obtain a HIPAA compliant release from every LFUCG Designate who is to receive covered services pursuant to this Agreement authorizing the UTC to release medical information that may be considered Private Health Information to the LFUCG. [To be further specified.] The LFUCG shall provide a copy of said release to the UTC and shall maintain a record of the release.

5.3 Duty to Make Timely Payment. The LFUCG shall pay the UTC for services rendered on a timely basis within thirty days of invoice.

6. INDEMNIFICATION AND HOLD HARMLESS PROVISION.

The UTC shall defend, indemnify, and hold harmless the LFUCG from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including defense costs and attorney's fees, that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, in whole or in part, from or by: (a) UTC's negligent acts or intentional misconduct, or errors or omissions, in connection with the performance of this contract, (b) UTC's performance or breach of the Agreement provided the claim or loss is attributable to death, illness, personal injury, or property loss or damage or loss of use, and not caused by the LFUCG, or (c) the condition of any premises, equipment or other property being used or operated by the UTC in connection with the performance of this Agreement. In the event the LFUCG is alleged to be liable based upon the actions or inactions of the UTC, UTC shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by the LFUCG, which approval shall not be unreasonably withheld. This Indemnification and Hold Harmless Provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement.

7. FINANCIAL RESPONSIBILITY.

The UTC understands and agrees that it shall, prior to final acceptance of its bid and the commencement of any work, demonstrate the ability to assure compliance with the Indemnity and other provisions of this Agreement.

8. REQUIRED INSURANCE COVERAGE.

UTC shall procure and maintain in full force and effect during the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subconsultants to maintain similar insurance with limits

acceptable to the LFUCG in order to protect the LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the UTC. UTC shall provide the LFUCG a certificate of insurance evidencing the same within five (5) days of the LFUCG's request for same. The cost of such insurance will be included in any bid:

8.1 General Liability: Limits of \$1 million per occurrence, \$2 million aggregate or \$2 million combined single aggregate;

8.2 Commercial Automobile Liability: Limits of \$1 million per single occurrence;

8.3 Professional Liability Insurance: Limits of \$1 million per occurrence and \$3 million aggregate;

8.4 Workers Compensation Insurance: In amounts consistent with the statutory limit;

8.5 Employers Liability Insurance: With limits of \$1 million.

The policies shall contain the conditions as set forth in the LFUCG Request for Proposal designated as RFP #20-2012 Occupational Wellness Administrator. The UTC shall provide the LFUCG a certificate of insurance evidencing the same within five days of the LFUCG's request for same.

9. TERM AND TERMINATION.

(a) **Commencement.** This Agreement shall commence upon 1-1-13 and shall continue until 1-1-16 for a period of three years unless terminated in accordance with this Agreement. Upon the Anniversary Date of this Agreement, the term of the Agreement shall automatically renew for an additional one year period, unless written notification is given by a party to the other 90 days prior to the anniversary date.

(b) **Termination.** This Agreement may be terminated by either Party, with or without cause, upon 60 days prior written notice to the other Party specifying the date of termination.

(c) **Notification of Renewal Rates.** The UTC shall notify the LFUCG of any changes in rates or renewal rates by no later than 90 days prior to the anniversary date of this Agreement.

(d) **Duty to Provide Services.** In the event of notification of termination of this Agreement, the UTC shall provide services until the effective date of termination and will guarantee provision of services through the Anniversary Date of the Agreement unless otherwise terminated.

(e) **Return of Information.** Upon termination of this Agreement for any reason, the UTC and the LFUCG shall return any and all information disclosed pursuant to the Agreement.

10. MISCELLANEOUS.

10.1 Medicare and Medicaid Law. The Parties acknowledge the existence of the Medicare and Medicaid Anti-Kickback law. The Parties expressly agree that nothing in this Agreement shall require either party to (1) make referrals to the other Party of any patients, or (2) purchase goods and services from or otherwise secure business for the other Party, the payment of which may be made by Medicare or Medicaid. It is further agreed that each Party does not intend to encourage the inappropriate utilization of goods or services of the other Party.

10.2 No Assignments. This Agreement is specific to each of the Parties hereto, and neither Party may assign or delegate any rights or obligations hereunder without first obtaining the written consent of the other Party.

10.3 Notices. Any notice or demand desired and required to be given hereunder shall be in writing and deemed given when personally delivered or when deposited in the United States mail, postage prepaid, sent certified or registered, and addressed as follows:

(a) If to UTC:

Ms. Tammy Scully
Urgent Treatment Clinic
3174 Custer Dr., Suite 200
Lexington, Kentucky 40517

(b) If to LFUCG:

or such other address or person as hereafter shall be designated in writing by the applicable party.

10.4 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matters hereof and supercede all negotiations, preliminary agreements and all prior or contemporaneous discussions and understanding of the Parties hereto in connection with the subject matters hereof.

10.5 No Waiver; Modifications in Writing. No failure or delay on the part of any Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to any Party at law or in equity or otherwise. No amendment, modification, supplement, termination or waiver of or to any provision of this Agreement, nor consent to any departure therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the Party to be charged with the enforcement thereof. Any amendment, modification or supplement of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given.

10.6 Severability. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. In the event any provision of this Agreement is held to be unenforceable as written, but enforceable if modified, then such provision shall be deemed to be amended to such extent as shall be necessary for such provision to be enforceable and it shall be enforced to that extent.

10.7 Governing Law. This Agreement has been entered into in Lexington, Kentucky, and shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky but without regard to provisions thereof relating to conflicts of law.

10.8 Headings and Captions. The titles or captions of sections and paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting and applying this Agreement, and such titles or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions.

10.9 Construction. This Agreement shall not be construed more strictly against any party regardless of who was more responsible for its preparation.

10.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in making proof hereof, it shall not be necessary to produce or account for more than one such counterpart.

10.11 Binding Effect on Successors and Assigns. This Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and permitted assigns. Nothing in

this Agreement, express or implied, is intended to confer upon any party other than the parties hereto (and their respective heirs, successors, legal representatives and permitted assigns) any rights, remedies, liabilities or obligations under or by reason of this Agreement.

10.12 Civil Rights Provision. Each party hereto warrants that it does not and will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, gender, veteran status, or handicap, or as otherwise may be prohibited by law. Each party hereto warrants that they are in full initial and ongoing compliance with all current applicable federal, state, and local laws, regulations, and ordinances, included but not limited to the Civil Rights of 1964, The Rehabilitation Act of 1973, The Fair Labor Standards Act, and other laws that may apply from time to time as amended.

10.13 Reporting Requirements for Experience Reports. The UTC shall provide the LFUCG Experience Reports on a quarterly basis. Experience Reports shall delineate the services provided to the LFUCG designates, the date of the service, the charge for the service, payments, and outstanding balances. This quarterly report will be delivered to Nora Cheek, LFUCG Account Rep.

10.14 Responsibility for HIPAA Coverage Certifications for Administered Plans. In the event that the UTC is designated as an Administrator of an insurance plan by the LFUCG, then the UTC shall be responsible for issuing all HIPAA required coverage certifications for individuals whose coverage ceases under a plan where the UTC has been designated as Administrator by the LFUCG.

11. RECORDS AND PATIENT FILES.

11.1 Patient Information. To the extent individually identifiable health information (referred to as "Protected Health Information" or "PHI") is used or disclosed in connection with this Agreement, the parties agree that such use or disclosure shall be in accordance with all applicable state and federal laws, including without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations (45 C.F.R. Parts 160-164). Further, the LFUCG and the UTC agree:

- (i) Not to use or disclose PHI other than as permitted under this Agreement or as required by law.
- (ii) To use appropriate physical, administrative and technical safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement.
- (iii) To report to the LFUCG any use or disclosure, or security breach, of PHI in violation of this Agreement of which the UTC or the LFUCG become aware.

- (iv) To ensure that any agent to whom the UTC or the LFUCG provides PHI received or created in connection with the Services agrees to the provisions of this Section.
- (v) To execute a Business Associate Agreement.

11. COMPENSATION.

TYPE OF SERVICE	COST PER SERVICE
All Medical History & Physical Exams (i.e.: Pre-employment, Hazmat, Materials Worker, Asbestos)	\$24.00
DOT Exam	\$24.00
5 Panel DOT Screen	\$21.00
9 Panel NON-DOT Screen	\$19.00
9 Panel Expanded Opiate Screen	\$29.00
BAT	\$15.00/test
Audiogram	\$5.00
Audiogram with Hearing Conservation	\$10.00
Spirometry	\$22.00
Chest X-Ray (PA Only)	\$20.00
Electrocardiogram	\$25.00
PPD	\$5.00
Respirator Fit Test	\$20.00
OSHA Respiratory Clearance	\$10.00
Hepatitis B Vaccine	\$35/inj
Tetanus Vaccine	\$30.00
Rabies Vaccine	\$300.00
Typhoid Vaccine	\$100.00/inj
Lipid Panel	\$8.00
Comprehensive Metabolic Panel	\$8.00
CBC	\$8.00
Zinc	\$24.00

Lead	\$14.00
Hepatitis B Titer	\$25.00
Mobile Audiograms	\$300/Hour
D & L Isomer, required for positive drug tests	0
6-MAM, required for positive drug test	0
Bottle B confirmation, required for DOT drug tests	\$125.00
Onsite scheduled/urgent drug testing	\$60/\$100 per event

[REMAINDER OF PAGE INTENTIONALL LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the 21 day of Sept, 2012.

UTC:

URGENTTREATMENTCLINICS d/b/a
UTC

BY: Larry C. Burns MD

ITS: UTC Area Medical Director

LFUCG:

LEXINGTON FAYETTE URBAN
COUNTY GOVERNMENT

BY: _____

ITS: _____

Z:\Bacha\LFUCG\Agreement for Occupational Health Admin and Svcs.doc

ATTACHMENT A

Covered Services

UTC shall provide the following covered services to LFUCG Designates.

Job Specific Pre-Employment and Health Screenings that include:

- Pre-employment & Health Screening Services
- Physical Examination
- Medical History
- Vision Screening
- Audiograms
- Pulmonary Function Test
- Lipid Profile
- Chemistry Profile
- Urinalysis
- 5 Panel DOT or 9 Panel, expanded opiate NON-DOT drug tests
- PPD Tuberculosis Skin Testing
- Complete Blood Count (CBC)
- Physical Fitness testing for specific job duties
- Immunization Updates
- Respiratory Fit Testing & OSHA medical clearance
- Biennial Physical Examinations
- Breath Alcohol Testing

Job Specific Screenings may include:

- Chest x-ray
- EKG
- Musculoskeletal screening with emphasis on knees and back
- TB Skin Testing (Mantoux and Two Step TB Skin Testing)

Hazardous Materials Services

- Materials Workers Examinations
- Respirator Clearance Examinations
- Asbestos Examinations
- Proof of Immunization Services per protocol; and
- Proof of immunity examinations and vaccinations as determined necessary by LFUCG and OSHA protocol
- Pulmonary Function Testing
- Vision Screening
- Audiometric Testing
- Urinalysis

- Electrocardiogram
- Zinc/Lead testing
- Chest X-ray
- Drug testing
- Lipid Profile and Chemistry Profile

Communicable Disease Services

- Provide vaccinations and immunizations against communicable diseases including, but not limited to hepatitis, tetanus, flu, and other communicable diseases as required and/or in response to public emergencies as determined by the LGUCG.
- Provide Tuberculosis Testing as follows:
 - Mantoux TB Skin Testing at Pre-employment for all staff with the exception of the Divisions of Corrections and Fire and Emergency Services Personnel as they will receive the Two-Step TB Skin Testing.
 - Provide routine and annual TB Skin Testing for designated employee populaces as directed by LFUCG Risk Management.
 - Provide Tuberculosis testing and medical management of personnel that are exposed to suspected active/active Tuberculosis; or presents with symptomatic behavior.

Department of Transportation Mandatory Alcohol & Drug Testing Services

[To be specified]

ATTACHMENT B

Fee Schedule

TYPE OF SERVICE	COST PER SERVICE
All Medical History & Physical Exams (i.e.: Pre-employment, Hazmat, Materials Worker, Asbestos)	\$24.00
DOT Exam	\$24.00
5 Panel DOT Screen	\$21.00
9 Panel NON-DOT Screen	\$19.00
9 Panel Expanded Opiate Screen	\$29.00
BAT	\$15.00/test
Audiogram	\$5.00
Audiogram with Hearing Conservation	\$10.00
Spirometry	\$22.00
Chest X-Ray (PA Only)	\$20.00
Electrocardiogram	\$25.00
PPD	\$5.00
Respirator Fit Test	\$20.00
OSHA Respiratory Clearance	\$10.00
Hepatitis B Vaccine	\$35/shot
Tetanus Vaccine	\$30.00
Rabies Vaccine	\$300/inj
Typhoid Vaccine	\$100/inj
Lipid Panel	\$8.00
Comprehensive Metabolic Panel	\$8.00
CBC	\$8.00
Zinc	\$24.00
Lead	\$14.00
Hepatitis B Titer	\$25.00
Mobile Audiograms	\$300/Hour

D & L Isomer, required for positive drug tests	0
6-MAM, required for positive drug test	0
Bottle B confirmation, required for DOT drug tests	\$125.00
Onsite scheduled/urgent drug testing	\$60/\$100 per event