



LAKE COUNTY FOREST PRESERVES
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Preservation, Restoration, Education and Recreation

DATE: October 8, 2015
MEMO TO: S. Michael Rummel, Chair
Finance and Administrative Committee
FROM: Mary E. Kann
Director of Administration
SUBJECT: Amendment to Occupational Health Services Contract

Agenda Item# 9.3

RECOMMENDATION: Recommend approval of a Resolution approving an amendment to the Contract with Advocate Health Care for Occupational Health Services effective November 1, 2015.

BACKGROUND: In November 2013, the District entered into a contract with Advocate Health Care for Occupational Health Services. The current contract will expire on October 30, 2015. The District wishes to amend the contract to allow for a one-year extension with the option of two additional one-year extensions. These extension options were originally included in the Request for Proposals that was advertised but the language was not reflected in the executed contract.

REASON FOR RECOMMENDATION: Committee recommendation and Board approval is required in accordance with District Policy.

REVIEW BY OTHERS: Executive Director, Chief Operations Officer, Director of Finance, Manager of Human Resources & Risk, Purchasing Manager, General Counsel.

FINANCIAL DATA: The District budgeted \$41,000 in FY15/16 for Occupational Health Services in account 23104000-707200. Since the original contract was approved, the District has implemented changes to reduce the number of tests required.

PRESENTER: Mary E. Kann

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION AMENDING A CONTRACT WITH ADVOCATE HEALTH CARE FOR
OCCUPATIONAL HEALTH SERVICES**

WHEREAS, on November 1, 2013 the Lake County Forest Preserve District (the "District") entered into a contract with Advocate Health Care for Occupational Health Services (the "Contract"); and

WHEREAS, the term of the Contract will expire on October 30, 2015; and

WHEREAS, the District desires to enter into an amendment to the Contract with Advocate Health Care for Occupational Health Services in substantially the form attached to this Resolution as **Exhibit A** to: (i) extend the term of the Contract for an additional year, and (ii) to provide for the option to renew the Contract for up to two additional one-year terms (the "Amendment");

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois THAT:

Section 1. Recitals. The recitals set forth above are incorporated as part of this Resolution by this reference.

Section 2. Approval of Amendment. The Amendment is hereby approved in substantially the form attached hereto.

Section 3. Execution of Amendment. The Executive Director of the District is hereby authorized and directed to execute the Amendment.

Section 4. Payments. The District Treasurer shall make payments under the Contract only pursuant to and in accordance with the Contract terms, as amended by the Amendment.

Section 5. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this _____ day of _____, 2015

AYES:

NAYS:

APPROVED this _____ day of _____, 2015

Ann B. Maine, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary

Exhibit # _____

AN AGREEMENT BETWEEN
THE LAKE COUNTY FOREST PRESERVE DISTRICT AND
ADVOCATE HEALTH AND HOSPITALS CORPORATION FOR
OCCUPATIONAL HEALTH SERVICES

This OCCUPATIONAL HEALTH SERVICES AGREEMENT (the "*Agreement*") is effective as of October 13, 2015, (the "*Effective Date*") and is entered into between the Lake County Forest Preserve District (the "*District*") and Advocate Health and Hospitals Corporation, an Illinois not-for-profit corporation d/b/a Advocate Occupational Health ("*Advocate*").

In consideration of the mutual covenants contained herein, the parties hereby agree as follows:

Section 1. Term: This Agreement is for a term commencing on November 1, 2015 and continuing through October 31, 2016, (the "*Term*") unless terminated sooner as provided herein. The District reserves the right to renew this contract for two additional one-year period(s), subject to acceptable performance by the Contractor. The District may extend the Term for a period of ninety (90) days for the purpose of negotiating a new contract with Advocate or another provider, provided that Advocate shall not be obligated to provide Services in excess of the Maximum Contract Price (as defined below) unless the District has issued a change order in accordance with Section 3.

Section 2. Scope of Services: Advocate shall provide the services up to the maximum number of services set forth in the Scope of Services attached to and by this reference incorporated into this Agreement as Exhibit A and perform all of its other obligations under this Agreement (collectively, the "*Services*"), in accordance with the terms and conditions of this Agreement.

Section 3. Compensation and Payment: For each Service listed on Exhibit A under the column "Medical Service," the District will pay to Advocate compensation in an amount equal to the Unit Cost for such Service identified in Exhibit A (the "Unit Costs"). Advocate's compensation for all Services during the Term shall not exceed \$41,000.00 (the "Maximum Contract Price"), unless the District issues a written change order directing Advocate to perform Services that have total Unit Costs in excess of the Maximum Contract Price for such Services. Advocate is not obligated to perform any Services and will not perform any Services that would result in the total Unit Costs exceeding the Maximum Contract Price until the District issues such a change order. In the event of early termination of this Agreement, the District shall only be obligated to pay compensation for Services that are rendered prior to the date of termination, and the District will not be obligated to pay any lost profits or overhead to Advocate. In addition, the District will not be liable to pay any compensation for any Services performed after the expiration of the Term. Advocate shall submit invoices referencing this Agreement with such supporting documentation as may reasonably be requested by the District. Each invoice shall be due and payable on or before the later of (i) the thirtieth (30th) day after the District's

receipt of such invoice and (ii) the thirtieth (30th) day after the parties' resolution of any dispute related to such invoice, however, the District shall pay any undisputed amounts within 30 days of the District's receipt of the invoice.

Section 4. Standards of Performance: Advocate shall devote, and shall cause its staff and subcontractors to devote, such of their time, attention, reasonable judgment, knowledge, and ability as is necessary to perform the Services. Advocate shall retain and use sufficient staff for the performance of Services and shall use professionals licensed to practice in the State of Illinois in the applicable profession as applicable and as required by law. Advocate agrees to cooperate with the District in performing Services.

Section 5. Non-Appropriation: Expenditures not appropriated by the District in the current fiscal year are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal years. In the event sufficient funds are not appropriated in a subsequent fiscal year by the District for performance under this Agreement, the District shall notify Advocate and this Agreement shall terminate on the last day of the fiscal year for which funds were appropriated.

Section 6. Overcharges: Advocate shall furnish the Services to the District at the Unit Prices in Exhibit A. If Advocate overcharges, then, in addition to all other remedies, the District is entitled to a refund in the amount of the overcharge. The District may offset any overcharge against any amounts due to Advocate under this Agreement or any other agreement between Advocate and the District.

Section 7. Document Retention: Advocate shall maintain all records, correspondence, subcontracts and related materials, receipts, vouchers, memoranda, and other data relating to the Services (the "Documents") for five years after completion of the Services, or while any disputes or actions are outstanding if longer. Advocate shall provide Documents to the District agreed to between Advocate and the District and as allowed by law.

Section 8. Termination:

A. Termination for Convenience. Either party may terminate this Agreement without cause upon 30 days prior written notice to the other party.

B. Suspension of Services. The District, on 30 days written notice, may direct Advocate to suspend Services in whole or part. Thereafter the District may direct Advocate by written notice to resume providing Services and in that event Advocate shall promptly resume performance of Services. The District shall provide Advocate with an equitable extension of time to provide any Service that was delayed by the suspension. The District and Advocate shall determine together whether Advocate incurred any extraordinary costs or expenses as a result of the suspension, including any remobilization costs that should be compensated by the District.

C. Events of Default. Events of default ("*Events of Default*") may include, but are not

limited to, the following:

- (1) Any material misrepresentation by a party in the inducement of this Agreement or the performance of Services.
- (2) Breach of any agreement, representation, or warranty made by a party in this Agreement.
- (3) Failure of a party to perform in accordance with or comply with the terms and conditions of this Agreement, including, but not limited to, the following:
 - (a) Action that affects the safety or welfare of District staff;
 - (b) Failure to provide any portion of the Services in the manner specified herein;
 - (c) Failure to perform the Services with sufficient staff, subcontractors, or equipment or with sufficient material to ensure the performance of the Services;
 - (d) Failure to promptly re-perform within a reasonable time Services that were determined by the District to be incomplete or unsatisfactory;
 - (e) Discontinuance of the Services; or
 - (f) Failure to comply with any term of this Agreement, including but not limited to, the provisions concerning insurance and nondiscrimination, and/or any other acts specifically and expressly stated in this Agreement constituting an Event of Default.
- (4) Assignment by a party for the benefit of creditors or consent by a party to the appointment of a trustee or receiver or the filing by or against a party of any petition or proceeding under any bankruptcy, insolvency or similar law.

D. Notice of Event of Default; Default; Termination. A party is in default of this Agreement on the occurrence of any Event of Default if (1) the party fails to cure the Event of Default within 30 days after receipt of a notice given in accordance with Section 21 of this Agreement and specifying the Event of Default, or (2) the Event of Default cannot be reasonably cured within 30 days after notice, if the defaulting party fails to commence and continuously and diligently undertake to cure the Event of Default as determined in the reasonable opinion of the other party.

E. Remedies. If a party is in default, then the other party may invoke, without limitation, the following remedies effective as of the termination date in the notice of default:

- (1) The right to terminate this Agreement.
- (2) The right to suspend Services during the 30-day cure period if the default results from Advocate's action that affects the safety or welfare of District staff.
- (3) The right to seek money damages.

If the District considers it to be in its best interest, the District may elect not to declare Advocate in default or not to terminate this Agreement. If the District permits Advocate to continue to provide the Services despite one or more Events of Default, then Advocate shall in no way be relieved of any responsibilities, duties, or obligations under this Agreement nor shall the District waive or relinquish any of its rights.

The remedies under this Agreement are not intended each to be exclusive of any other remedies provided in this Agreement or by law, but each remedy is cumulative and is in addition to any other remedies, existing now or hereafter, at law, in equity, or by statute. No delay or omission by the a party to exercise any right or power accruing upon any Event of Default shall be construed as a waiver of any Event of Default or acquiescence thereto, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

F. Documents and Records. Advocate shall maintain each employee's health-related information in a secure and confidential manner and shall only release such information to the District upon such employee's written authorization or as allowed by law.

Section 9. Confidential Information, Dissemination of Information, Ownership, Survival:

A. Confidential Information. In performance of Services, each party may have access to or receive certain information that is not generally known to others ("*Confidential Information*"). Except as required to provide the Services, which includes the obligation to meet state or other governmental or industry reporting requirements, and except as required by law, each party agrees not to use or disclose any Confidential Information or any records, reports, or documents prepared or generated as a result of this Agreement without the prior written consent of the other party.

B. Dissemination of Information. Neither party shall use the other party's name, issue publicity news releases or grant press interviews related to the Services, nor shall either party disseminate any information regarding the Services without specific prior written consent from the other party. In the event that a party is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any records or data that may be in such party's possession as a result of Services under this Agreement, such party shall immediately give notice to the other party with the understanding that the other party can contest such process by any means available to it prior to submission of any documents to a court or other third party. Neither party will be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or *subpoena* is quashed or withdrawn, or the

time to produce is otherwise extended. In addition, Advocate may deliver standard claims administration information required for licensing or other state agency requirements and such delivery does not require prior notice to the District.

C. Survival. The provisions of this Section 9 shall survive the termination or expiration of this Agreement.

Section 10. Representations and Warranties: Each party, as applicable, represents and warrants that the following are true and correct as of the Effective Date and shall continue to be true and correct during the Term:

A. Contractor's Disclosure. Advocate shall promptly notify the District of any material change in information set forth therein, including, but not limited to, change in ownership or control, and any such change in this Agreement shall be subject to District approval which shall not be unreasonably withheld.

B. Licensed Professionals. Services required by law to be performed by professionals licensed to practice by the State of Illinois in the applicable professional discipline shall be undertaken only in compliance with those requirements.

C. Financially Solvent. Advocate is financially solvent, is able to pay all debts as they mature, and is possessed of sufficient working capital to complete all Services and perform all obligations under this Agreement.

D. Industry Standards. Advocate will use reasonable efforts so that all Services will be in conformance with industry standards.

E. Compliance with Laws. Each party is and shall remain in compliance with all applicable local, state and federal laws, ordinances, regulations, and statutes relating to its performance or receipt of Services under this Agreement.

F. Gratuities. Advocate represents and warrants that no payment, gratuity, or offer of employment was made to or by Advocate, any of its members if a joint venture in relation to this Agreement or as an inducement for award of this Agreement.

G. Authorization. The person executing this Agreement on behalf of Advocate represents and warrants that Advocate has taken all action necessary for the approval and execution of this Agreement, and that he or she has been duly authorized by Advocate to commit Advocate to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Advocate.

Section 11. Independent Contractor: The relationship between Advocate and the District is and shall continue to be that of independent contractor. Advocate's staff, agents, employees, and subcontractors are not District employees and shall be entitled to receive District employee benefits. The District shall not be responsible for, nor incur any liability for, any State or federal withholding or

other taxes or for FICA or State unemployment insurance for Advocate or its agents, employees, or subcontractors, and the payment of any such taxes incurred or due by Advocate shall be the sole responsibility of Advocate. Neither Advocate nor its staff or subcontractors shall represent themselves as employees or agents of the District. Advocate shall provide the District with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including a federal employer identification number.

Section 12. Standard of Care; Indemnification: Advocate shall be fully responsible for exercising reasonable care at all times in the performance of its obligations. Advocate shall protect, indemnify, hold and save harmless and defend the District its officers, officials, employees, volunteers, and agents against any and all third party claims, costs, causes, actions, damages, and expenses, including but not limited to attorney's fees incurred by reason of a lawsuit or claim for compensation alleged by any person or entity for personal injuries or death, or damages to property occurring, growing out of, incidental to, or resulting directly or indirectly from the Services. The District shall have the right, at its own expense, to participate in the defense of any suit, without relieving Advocate of any of its obligations hereunder. The District retains final approval of any and all settlements or legal strategies which involve the interest of the District. The indemnities set forth herein shall survive the expiration or termination of this Agreement.

Section 13. Non-Liability of District Officials: Advocate agrees that no District commissioner, employee, agent, officer, or official shall be personally charged by Advocate or any of its members if a joint venture, or by any subcontractors with any liability or expense under this Agreement, or be held personally liable under this Agreement to Advocate or any of its members if a joint venture, or any subcontractors.

Section 14. Insurance Requirements: All insurance policies shall be issued from insurance companies holding at least an "A5" or better rating as rated by A.M. Best Company. All policies shall include the District named as additional insured.

A. Worker's Compensation and Employer's Liability with limits not less than:

- Worker's Compensation: Statutory
- Employer's Liability:
 - i. \$1,000,000.00 injury-per-occurrence
 - ii. \$500,000.00 disease-per-employee
 - iii. \$500,000.00 disease-policy limit

Such insurance shall evidence that coverage applies in the State of Illinois. All employees shall be included as insured's.

B. Comprehensive General Liability with coverage written on an "occurrence" basis and

with limits no less than:

- General Aggregate: \$2,000,000.00
- Bodily Injury:
 - i. \$2,000,000.00 per person
 - ii. \$2,000,000.00 per occurrence
- Other Coverages:
 - Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)
 - Premises/Operations
 - Products/Completed Operations (to be maintained for two years following Final Payment)
 - Independent Contractors
 - Personal Injury (with Employment Exclusion deleted)
 - Broad Form Property Damage Endorsement
 - Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)
 - Bodily Injury and Property Damage "X", "C", and "U" exclusions shall be deleted

All employees shall be included as insured's.

C. Professional Liability.

- \$1,000,000 per occurrence
- \$3,000,000 aggregate

D. Umbrella Policy. The required coverages may be in any combination of primary, excess and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

E. Deductible. Each policy shall have a deductible or self-insured retention of not more than \$500.

F. Owner as Additional Insured. Owner shall be named as an Additional Insured on all the

following policies for:

- Comprehensive General Liability

The Additional Insured endorsement shall identify Owner as follows:

Lake County Forest Preserve District (Owner)

G. Evidence of Insurance. Advocate shall furnish District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Failure of District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Advocate's obligation to maintain such insurance. District shall have the right, but not the obligation, to suspend Services and prohibit Advocate from entering District property until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by District. Failure to maintain the required insurance may result in termination of this Contract at District's option. Advocate shall provide certified copies of all insurance policies required above within 10 days of Districts' written request for said copies.

H. General. Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Advocate. Any insurance or self-insurance programs maintained by the District are not available to Advocate to satisfy its insurance or indemnification obligations. The coverage and limits furnished by Advocate in no way limit Advocate's liabilities and responsibilities under the Agreement or by law. The required minimum insurance requirements do not limit any of Advocate's indemnification obligations.

Section 15. Non Discrimination: In providing and receiving Services under this Agreement, the Parties agree not to discriminate on the basis of race, color, sex, age, religion, national origin, handicap or any other factor pursuant to 42 U.S.C. Section 2000d or the regulations thereto, or any applicable state or local statutes, regulations or ordinances, as may be amended or superseded from time to time.

Section 16. Binding Effect; Assignment: This Agreement shall be binding on the parties and their permitted successors and assigns. Neither party may assign this Agreement or any obligations imposed hereunder without the specific prior written consent of the other party, which may be withheld in such party's sole discretion.

Section 17. Entire Agreement; Amendments: This Agreement, including Exhibit A, constitutes the entire agreement of the parties with respect to the matters contained herein. This Agreement cannot be amended except in writing and signed by both parties.

Section 18. Survival; Severability: All representations and indemnifications made or given in this Agreement shall survive the completion of Services by Advocate or the termination of this

Agreement for any reason. If any provision or part of this Agreement is held to be unenforceable, this Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects this Agreement shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

Section 19. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to any conflict of law or choice of law principles. Advocate agrees that any suit to enforce any provision of this Agreement or arising in or in any way related to this Agreement shall be brought in the state courts in Lake County, Illinois.

Section 20. Waiver: No delay or omission, or series of delays or omissions, by either party to exercise any right hereunder shall be construed as any type of waiver of any such right, and each party reserves the right to exercise any such right from time to time as often as may be deemed expedient.

Section 21. Notices: All notices required or permitted to be given under this Contract shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in the United States mail, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested. Notices and communications to the District shall be addressed to, and delivered at, the following address:

Lake County Forest Preserve District
1899 West Winchester Road
Libertyville, Illinois 60048
Attention: Laurel Diver

Notices and communications to Advocate shall be addressed to and delivered at the following address:

Advocate Health Care
3075 Highland Parkway, Suite 600
Downers Grove, IL 60515
Attn: President, Physician & Ambulatory Services
Facsimile: (630) 929-9920

With a copy to:

Advocate Health Care
3075 Highland Parkway, Suite 600
Downers Grove, IL 60515
Attn: Senior Vice President, General Counsel

By notice complying with the requirements of this Section 21, the District and Advocate each shall have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address or addressee shall be effective until actually received. The foregoing shall not be

deemed to invalidate any notice actually received.

Section 22. Force Majeure: In the event that either Party shall be delayed, hindered or prevented from the performance of its duties or obligations hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, fire or other destruction of the facility, restrictive governmental laws or regulations, riots, insurrections, acts of terrorism, war or other reason of a like nature not reasonably within the control of the delayed Party ("**Force Majeure Event**") in performing any of its obligations under the terms of this Agreement, then performance of such obligations shall be excused for the period of the Force Majeure Event.

Section 23. Non-Solicitation: During the Term of this Agreement and for a period of twelve (12) months thereafter, whether because of the termination or expiration of this Agreement or otherwise, the District covenants and agrees that it shall not, directly or indirectly, seek to hire any Advocate employee who has been assigned by Advocate to perform any Services under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

(SEAL)

Attest/Witness

LAKE COUNTY FOREST PRESERVE DISTRICT

By: _____

Julie A. Gragnani

Alex Ty Kovach

Title: Secretary

Title: Executive Director

Attest/Witness

ADVOCATE HEALTH AND HOSPITALS CORPORATION

By: _____

(NAME OF ADVOCATE'S EXECUTING OFFICER)

Title: _____

(TITLE OF ADVOCATE'S EXECUTING OFFICER)

EXHIBIT A

To An Agreement Between

the Lake County Forest Preserve District and

Advocate Health and Hospitals Corporation for

Occupational Health Services

SCOPE OF SERVICES

Medical Service	Unit Cost	Estimated Quantity Per Year	Extended Total Cost
General Physical Exam (Based on current practice) Occupational Medical History including Review by Physician, Urinalysis, Vision Screen and Vital Signs	<u>\$58</u>	<u>150</u>	<u>\$8,700</u>
DOT Exam	<u>\$60</u>	<u>5</u>	<u>\$300</u>
Back Assessment Exam	<u>\$60</u>	<u>150</u>	<u>\$9,000</u>
Hepatitis B Vaccination	<u>\$75</u>	<u>20</u>	<u>\$1,500</u>
Pulmonary Function Test	<u>\$37</u>	<u>10</u>	<u>\$370</u>
Electrocardiogram (12 lead)	<u>\$57</u>	<u>50</u>	<u>\$2,850</u>
Tetanus	<u>\$95</u>	<u>5</u>	<u>\$475</u>
Lead Testing	<u>\$119</u>	<u>2</u>	<u>\$238</u>
Respirator Fit Testing	<u>\$40</u>	<u>20</u>	<u>\$800</u>
Drug Screen (Based on current practice)			
9 Panel Collection	<u>\$43</u>	<u>200</u>	<u>\$8,600</u>
DOT 5 Panel	<u>\$51</u>	<u>40</u>	<u>\$2,040</u>
BAT	<u>\$33</u>	<u>50</u>	<u>\$1,650</u>