



City of Des Plaines
Fire Department
 405 South River Road
 Des Plaines, IL 60016
 Tel: 847-391-5333

MEMORANDUM

Date: November 29, 2012
To: Michael Bartholomew, City Manager
From: Alan Wax, Fire Chief *AW*
Re: Physical Examinations and Associated Testings

Issue: All uniformed members of the Des Plaines Fire Department (DPFD) receive annual medical evaluations. The terms of the previous proposal accepted by the City for the provision of physical examinations and associated testings by Alexian Brothers Medical Group (Alexian Brothers) expires on December 31, 2012.

Analysis: For the past 17 years, the City has utilized the services of Alexian Brothers to provide pre-employment and annual physical examinations/screenings, injury checks, hazardous materials team physicals, back-to-work physicals, and associated testings. During the last full proposal period (January 1, 2009 to December 31, 2011) and the current one (1) year extension agreement (January 1, 2012 to December 31, 2012), despite being allowed to raise fees each year per the accepted proposal, Alexian Brothers voluntarily held their prices to the 2009 rates during all four years, with those rates as follows:

- a) Pre-Employment Testing – \$729.00 per firefighter candidate
- b) Personnel Under 40 Years of Age Testing – \$258.00 per firefighter
- c) Personnel 40 Years of Age and Older Testing – \$309.00 per firefighter
- d) Hazardous Material Testing – \$465.00 per firefighter.

The Des Plaines Fire Department (DPFD) sent out a Request for Proposals (RFP) for physical examinations and associated testings to nine (9) vendors, six (6) local vendors and three (3) out-of-state vendors. By the stated deadline of November 2, 2012, the City received seven (7) proposals. Table I shows the proposals received:

Table I
Vendor Proposal Comparison with Estimated Employee Counts

Healthcare Provider	Years of Experience	Location(s)	Contract Years	Testing Categories			Estimated Annual Cost	Notes
				Under 40 Years of Age ¹	40 Years of Age and Older ¹	Hazardous Material		
Advocate Occupational Health (847) 228-0515	20	1502 S. Elmhurst Rd. Elk Grove, IL (additional location)	2013	39 x \$260.00	53 x \$308.00	9 x \$560.00	\$31,504.00	1) negotiable 2% increase 2nd and 3rd years for all tests
			2014	36 x \$260.00	56 x \$308.00	9 x \$560.00	\$31,648.00	
			2015	34 x \$260.00	58 x \$308.00	9 x \$560.00	\$31,744.00	
Alexian Brothers Medical Group (224) 265-9010	6	1060 S. Elmhurst Mount Prospect, IL	2013	39 x \$223.00	53 x \$307.00	9 x \$458.00	\$29,090.00	
			2014	36 x \$223.00	56 x \$307.00	9 x \$458.00	\$29,342.00	
			2015	34 x \$223.00	58 x \$307.00	9 x \$458.00	\$29,510.00	
Concentra Health Services (800) 232-3550	33	1830 Jarvis Ave. Elk Grove, IL (additional locations)	2013	39 x \$492.50	53 x \$627.50	9 x \$931.50	\$60,848.50	
			2014	36 x \$492.50	56 x \$627.50	9 x \$931.50	\$61,253.50	
			2015	34 x \$492.50	58 x \$627.50	9 x \$931.50	\$61,523.50	
Examnetics, Inc. (800) 946-7228	28	DPFD Stations (70 mobile units; 20 hubs)	2013	See Notes to the right			\$31,022.00	did not provide fee breakdown by test for the different categories
			2014					
			2015					
Health Endeavors (773) 575-0092	13	DPFD Stations (2 mobile units; 3rd in 2013 - 2014)	2013	39 x \$316.00	53 x \$348.00	9 x \$612.00	\$36,170.00	
			2014	36 x \$316.00	56 x \$348.00	9 x \$612.00	\$36,260.00	
			2015	34 x \$316.00	58 x \$348.00	9 x \$612.00	\$36,320.00	
NorthShore OMEGA (847) 657-1700	20	2150 Pfingsten Rd. Glenview, IL	2013	39 x \$396.00	53 x \$438.00	9 x \$706.00	\$44,906.00	
			2014	36 x \$396.00	56 x \$438.00	9 x \$706.00	\$45,026.00	
			2015	34 x \$396.00	58 x \$438.00	9 x \$706.00	\$45,106.00	
Resurrection Health Care (847) 813-3510	17	150 N. River Rd. Des Plaines, IL	2013	39 x \$299.50	53 x \$355.50	9 x \$852.50	\$38,194.50	
			2014	36 x \$299.50	56 x \$355.50	9 x \$852.50	\$38,362.50	
			2015	34 x \$299.50	58 x \$355.50	9 x \$852.50	\$38,474.50	

NOTE:

¹ = These employee counts are based on the current personnel roster. These numbers could fluctuate up or down depending on retirements, resignations, and/or new hires.

A committee that consisted of Finance Director Dorothy Wisniewski, Division Chief Pete Dyer, Administrative Analyst Pedro Pelaez, and me reviewed all the proposals received. The committee evaluated the vendors for their abilities to meet the requirements of the proposal and provide the lowest flat fee for their services.

After comparing all the proposals, the committee selected Alexian Brothers as the most qualified provider based on its ability to meet the requirements of the RFP and charge very competitive fees for its services. It should be noted that these prices are generally less than those charged by Alexian Brothers since 2009.

The cost for annual employee physicals for the first (1st) year under the proposal is estimated at \$29,090, the second (2nd) year \$29,342, and the third (3rd) year \$29,510. An amount of \$32,000 has been established in the 2013 Budget for such physicals for Fire Department personnel.

Recommendation: In the best interest of the City, Staff recommends that the City accept the proposal for providing physical examinations and associated testings for the period between January 1, 2013 and December 31, 2015 from Alexian Brothers Medical Group, 1060 South Elmhurst Road, Mount Prospect, IL 60056.

We request this item be placed on the consent agenda for approval at the December 17, 2012 City Council Meeting.

Attachments: Resolution

Alexian Brothers Medical Group Proposal (sample reporting forms attached to proposal deleted)

**CITY OF DES PLAINES
PROFESSIONAL SERVICES AGREEMENT**

This **PROFESSIONAL SERVICES AGREEMENT** ("**Agreement**") is dated as of the ____ day of _____, _____, and is by and between the **CITY OF DES PLAINES**, an Illinois home rule municipal corporation ("**City**"), and the Consultant identified in Section 1.A of this Agreement.

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the City's statutory and home rule powers, the parties agree as follows:

SECTION 1. CONSULTANT.

A. Engagement of Consultant. The City desires to engage the Consultant identified below to perform and to provide all necessary professional consulting services to perform the work in connection with the project identified below:

Consultant Name ("Consultant**"):** Alexian Brothers Medical Group

Address: 1060 South Elmhurst Road
Mount Prospect, IL 60056

Telephone No.: (224) 265-9045

Email: Vicky.Chiakulas@alexian.net

Project Name/Description: City of Des Plaines Firefighter Physical Examinations

B. Project Description. The Consultant shall provide pre-employment physical examinations to candidates for City firefighter positions and annual physical examinations to current City firefighters, as well as other medical testing of firefighters, as more fully described in the proposal attached to this Agreement as **Exhibit A ("**Proposal**")**.

C. Representations of Consultant. The Consultant represents that it is financially solvent, has the necessary financial resources, and is sufficiently experienced and competent to perform and complete the consulting services that are set forth in the Proposal ("**Services**") in a manner consistent with the standards of professional practice by recognized consulting firms providing services of a similar nature.

SECTION 2. SCOPE OF SERVICES.

A. Retention of the Consultant. The City retains the Consultant to perform, and the Consultant agrees to perform, the Services.

B. Services. The Consultant shall provide the Services pursuant to the terms and conditions of this Agreement.

C. Commencement; Term. The Consultant shall commence the Services immediately upon receipt of written notice from the City that this Agreement has been fully executed by the Parties ("**Commencement Date**"). The Consultant shall diligently and continuously prosecute the Services for a term that ends three years after the Commencement Date ("**Term**").

D. Renewal. The City may renew this Agreement at its sole and absolute discretion for a term of one year ("**Renewal Term**") by providing written notice to the Consultant not less than 60 days before the expiration of the Term or any Renewal Term.

E. Reporting. The Consultant shall regularly report to the City Manager, or his designee, regarding the progress of the Services during the Term or any Renewal Term of this Agreement.

SECTION 3. COMPENSATION AND METHOD OF PAYMENT.

A. Agreement Amount. The City shall pay the Consultant for the Services pursuant to this Agreement the amounts identified in the fee schedule set forth in the Proposal. No claim for additional compensation shall be valid unless made in accordance with Sections 3.D or 3.E of this Agreement.

B. Invoices and Payment. The Consultant shall submit invoices in an approved format to the City for costs incurred by the Consultant in performing the Services. The amount billed in each invoice for the Services shall be based solely upon the rates set forth in the Proposal. The City shall pay to the Consultant the amount billed within 60 days after receiving such an invoice.

C. Records. The Consultant shall maintain records showing actual time devoted and costs incurred, and shall permit the City to inspect and audit all data and records of the Consultant for work done pursuant to this Agreement. The records shall be made available to the City at reasonable times during the Term or any Renewal of this Agreement, and for one year after the termination of this Agreement.

D. Claim In Addition To Agreement Amount.

1. The Consultant shall provide written notice to the City of any claim for additional compensation as a result of action taken by the City, within 15 days after the occurrence of such action.

2. The Consultant acknowledges and agrees that: (a) the provision of written notice pursuant to Section 3.D.1 of this Agreement shall not be deemed or interpreted as entitling the Consultant to any additional compensation; and (b) any changes in the Agreement Amount shall be valid only upon written amendment pursuant to Section 8.A of this Agreement.

3. Regardless of the decision of the City relative to a claim submitted by the Consultant, the Consultant shall proceed with all of the work required to complete the Services under this Agreement, as determined by the City, without interruption.

E. Additional Services. The Consultant acknowledges and agrees that the City shall not be liable for any costs incurred by the Consultant in connection with any services provided by the Consultant that are outside the scope of this Agreement ("**Additional Services**"), regardless of whether such Additional Services are requested or directed by the City, except upon the prior written consent of the City.

F. Taxes, Benefits, and Royalties. Each payment by the City to the Consultant includes all applicable federal, state, and City taxes of every kind and nature applicable to the Services, as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits, and all costs, royalties, and fees arising from the use on, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claims or rights to claim additional compensation by reason of the payment of any such tax, contribution, premium, cost, royalty, or fee are hereby waived and released by the Consultant.

G. Final Acceptance. The Services, or, if the Services are to be performed in separate phases, each phase of the Services, shall be considered complete on the date of final written acceptance by the City of the Services or each phase of the Services, as the case may be, which acceptance shall not be unreasonably withheld or delayed.

SECTION 4. PERSONNEL; SUBCONTRACTORS.

A. Key Project Personnel. The Key Project Personnel identified in the Proposal, including, without limitation, Thomas Reese, M.D., and Salvador Cabanit, M.D., shall be primarily responsible for carrying out the Services on behalf of the Consultant. The Key Project Personnel shall not be changed without the City's prior written approval.

B. Availability of Personnel. The Consultant shall provide all personnel necessary to complete the Services including, without limitation, any Key Project Personnel identified in this Agreement. The Consultant shall notify the City as soon as practicable prior to terminating the employment of, reassigning, or receiving notice of the resignation of, any Key Project Personnel. The Consultant shall have no claim for damages and shall not bill the City for additional time and materials charges as the result of any portion of the Services which must be duplicated or redone as a result of any such termination, reassignment, or resignation.

C. Approval and Use of Subcontractors. The Consultant shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved in advance by the City in writing. All subcontractors and subcontracts used by the Consultant shall be acceptable to, and approved in advance by, the City. The City's approval of any subcontractor or subcontract shall not relieve the Consultant of full responsibility and liability for the provision, performance, and completion of the Services as required by this Agreement. All Services performed under any subcontract shall be subject to all of the provisions of this Agreement in the same manner as if performed by employees of the Consultant. For purposes of this Agreement, the term "Consultant" shall be deemed also to refer to all subcontractors of the Consultant, and every subcontract shall include a provision binding the subcontractor to all provisions of this Agreement.

D. Removal of Personnel and Subcontractors. If any personnel or subcontractor fails to perform the Services in a manner satisfactory to the City and consistent with commonly accepted professional practices, the Consultant shall immediately upon notice from the City remove and replace such personnel or subcontractor. The Consultant shall have no claim for damages or for compensation in excess of the amount contained in this Agreement as a result of any such removal or replacement.

SECTION 5. CONFIDENTIAL INFORMATION.

A. Confidential Information. The term "***Confidential Information***" shall mean information in the possession or under the control of the City relating to the technical, business, or corporate affairs of the City; City property; user information, including, without limitation, any information pertaining to usage of the City's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. City Confidential Information shall not include information that can be demonstrated: (1) to have been rightfully in the possession of the Consultant from a source other than the City prior to the time of disclosure of such information to the Consultant pursuant to this Agreement ("***Time of Disclosure***"); (2) to have been in the public domain prior to the Time of Disclosure; (3) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Consultant or the City; or (4) to have been supplied to the Consultant after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

B. No Disclosure of Confidential Information by the Consultant. The Consultant acknowledges that it shall, in performing the Services for the City under this Agreement, have access, or be directly or indirectly exposed, to Confidential Information. The Consultant shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without the express prior written consent of the City. The Consultant shall use reasonable measures at least as strict as those the Consultant uses to protect its own confidential information. Such measures

shall include, without limitation, requiring employees and subcontractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.

SECTION 6. STANDARD OF SERVICES AND INDEMNIFICATION.

A. Representation and Certification of Services. The Consultant represents and certifies that the Services shall be performed in accordance with the standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in existence during the Term or any Renewal Term. The representations and certifications expressed shall be in addition to any other representations and certifications expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City.

B. Indemnification. The Consultant shall, and does hereby agree to, indemnify, save harmless, and defend the City against all damages, liability, claims, losses, and expenses (including attorneys' fees) that may arise, or be alleged to have arisen, out of or in connection with the Consultant's performance of, or failure to perform, the Services or any part thereof, or any failure to meet the representations and certifications set forth in Section 6.A of this Agreement.

C. Insurance. The Consultant shall provide, at its sole cost and expense, liability insurance in the aggregate amount of \$1,000,000, which insurance shall include, without limitation, protection for all activities associated with the Services. The insurance shall be for a minimum of \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage. The Consultant shall cause the City to be named as an additional insured on the insurance policy described in this Section 6.C. Not later than 10 days after the Commencement Date, the Consultant shall provide the City with either: (a) a copy of the entire insurance policy; or (b) a Certificate of Insurance along with a letter from the broker issuing the insurance policy to the effect that the Certificate accurately reflects the contents of the insurance policy. The insurance coverages and limits set forth in this Section 6.C shall be deemed to be minimum coverages and limits, and shall not be construed in any way as a limitation on the Consultant's duty to carry adequate insurance or on the Consultant's liability for losses or damages under this Agreement.

D. No Personal Liability. No elected or appointed official or employee of the City shall be personally liable, in law or in contract, to the Consultant as the result of the execution of this Agreement.

SECTION 7. CONSULTANT AGREEMENT GENERAL PROVISIONS.

A. Relationship of the Parties. The Consultant shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed: (1) to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the City and Consultant;

or (2) to create any relationship between the City and any subcontractor of the Consultant.

B. Conflict of Interest. The Consultant represents and certifies that, to the best of its knowledge: (1) no elected or appointed City official, employee or agent has a personal financial interest in the business of the Consultant or in this Agreement, or has personally received payment or other consideration for this Agreement; (2) as of the date of this Agreement, neither Consultant nor any person employed or associated with Consultant has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither Consultant nor any person employed by or associated with Consultant shall at any time during the Term or any Renewal Term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

C. No Collusion. The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless the Consultant is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Consultant has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Consultant shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

D. Termination. Notwithstanding any other provision hereof, the City may terminate this Agreement at any time upon 15 days written notice to the Consultant. In the event that this Agreement is so terminated, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred, if any, prior to termination, not exceeding the value of the Services completed, which shall be determined on the basis of the rates set forth in the Proposal.

E. Compliance With Laws and Grants.

1. **Compliance with Laws.** The Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and with all applicable statutes, ordinances, rules, and regulations, including, without limitation: the Health Insurance Portability and Accountability Act of 1996; any applicable prevailing

wage laws; the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes requiring preference to laborers of specified classes; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* The Consultant shall also comply with all conditions of any federal, state, or local grant received by the City or the Consultant with respect to this Agreement or the Services. Further, the Consultant shall have a written sexual harassment policy in compliance with Section 2-105 of the Illinois Human Rights Act.

2. Liability for Noncompliance. The Consultant shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with the Consultant's, or any of its subcontractors, performance of, or failure to perform, the Services or any part thereof.

3. Required Provisions. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

F. Default. If it should appear at any time that the Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("**Event of Default**"), and fails to cure any such Event of Default within ten business days after the Consultant's receipt of written notice of such Event of Default from the City, then the City shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. Cure by Consultant. The City may require the Consultant, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all other action necessary to bring the Consultant and the Services into compliance with this Agreement.

2. Termination of Agreement by City. The City may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement after the effective date of termination.

3. Withholding of Payment by City. The City may withhold from any payment, whether or not previously approved, or may recover from the Consultant, any and all costs, including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default by the Consultant or as a result of actions taken by the City in response to any Event of Default by the Consultant.

G. No Additional Obligation. The Parties acknowledge and agree that the City is under no obligation under this Agreement or otherwise to negotiate or enter into

any other or additional contracts or agreements with the Consultant or with any vendor solicited or recommended by the Consultant.

H. City Council Authority. Notwithstanding any provision of this Agreement, any negotiations or agreements with, or representations by the Consultant to, vendors shall be subject to the approval of the City Council. For purposes of this Section 7.H, "vendors" shall mean entities engaged in subcontracts for the provision of additional services directly to the City. The City shall not be liable to any vendor or third party for any agreements made by the Consultant without the knowledge and approval of the City Council.

I. Mutual Cooperation. The City agrees to cooperate with the Consultant in the performance of the Services, including meeting with the Consultant and providing the Consultant with such non-confidential information that the City may have that may be relevant and helpful to the Consultant's performance of the Services. The Consultant agrees to cooperate with the City in the performance and completion of the Services and with any other consultants engaged by the City.

J. News Releases. The Consultant shall not issue any news releases, advertisements, or other public statements regarding the Services without the prior written consent of the City Manager.

K. Ownership. Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, and any other documents, data, or information, in any form, prepared, collected, or received from the City by the Consultant in connection with any or all of the Services to be performed under this Agreement ("**Documents**") shall be and remain the exclusive property of the City. At the City's request, or upon termination of this Agreement, the Consultant shall cause the Documents to be promptly delivered to the City.

SECTION 8. GENERAL PROVISIONS.

A. Amendment. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by the City and the Consultant in accordance with all applicable statutory procedures.

B. Assignment. This Agreement may not be assigned by the City or by the Consultant without the prior written consent of the other party.

C. Binding Effect. The terms of this Agreement shall bind and inure to the benefit of the City, the Consultant, and their agents, successors, and assigns.

D. Notice. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, or by (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of: (a) actual receipt; (b) one business day after deposit with an overnight courier, as evidenced by a receipt of deposit; or (c) four

business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 8.D, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other party, but no notice of a change of addressee or address shall be effective until actually received.

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

City of Des Plaines
1420 Miner Street
Des Plaines, Illinois 60016
Attention: Chief of Fire Department

With a copy to:

Holland & Knight LLP
131 S. Dearborn, 30th Floor
Chicago, Illinois 60603
Attention: Peter M. Friedman

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

Alexian Brothers Medical Group
1060 South Elmhurst Road
Mount Prospect, IL 60056
Attention: Vicky Chiakulas

With a copy to:

E. Third Party Beneficiary. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the City.

F. Provisions Severable. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

G. Time. Time is of the essence in the performance of all terms and provisions of this Agreement.

H. Calendar Days and Time. Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

I. Governing Laws. This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

J. Authority to Execute.

1. **The City.** The City hereby warrants and represents to the Consultant that the persons executing this Agreement on its behalf have been properly authorized to do so by its corporate authorities.

2. **The Consultant.** The Consultant hereby warrants and represents to the City that the persons executing this Agreement on its behalf have the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken.

K. Entire Agreement. This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

L. Waiver. Neither the City nor the Consultant shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the City or the Consultant to exercise at any time any such rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the City's or the Consultant's right to enforce such rights or any other rights.

M. Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

N. Grammatical Usage and Construction. In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

O. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover,

each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

P. Headings. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

Q. Exhibits. Exhibits A through ___ attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an Exhibit and the text of this Agreement, the text of this Agreement shall control.

R. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

S. Counterpart Execution. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement this _____ day of _____, 20__.

ATTEST:

CITY OF DES PLAINES

By: _____
City Clerk

By: _____
City Manager

ATTEST:

CONSULTANT

By: _____

By: _____

Title: _____

Its: _____

EXHIBIT A
PROPOSAL

[TO BE PREPARED BY CONSULTANT AND ACCEPTABLE TO CITY]

[SHALL INCLUDE SCHEDULE]

CITY OF DES PLAINES

RESOLUTION R - 149 - 12

**A RESOLUTION AUTHORIZING THE ACCEPTANCE OF
A PROPOSAL FROM ALEXIAN BROTHERS MEDICAL
GROUP TO PERFORM PHYSICAL EXAMINATIONS AND
ASSOCIATED TESTINGS FOR THE DES PLAINES FIRE
DEPARTMENT.**

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City of Des Plaines (the City) to contract with individuals, associations and corporations, in any manner not prohibited by law or ordinance; and

WHEREAS, DPFDF sent out Request for Proposals (RFP) to seven (7) medical firms for a three (3) year agreement to conduct physical examinations and associated testings for all uniformed personnel of the Fire Department and seven (7) responded; and

WHEREAS, a Staff review committee selected Alexian Brothers Medical Group (Alexian Brothers) to conduct physical examinations and associated testings for uniformed Fire Department personnel as the most qualified provider based on their ability to meet the requirements of the RFP and that they provide the lowest flat fees for their services; and

WHEREAS, it is in the best interest of the City to accept the proposal from Alexian Brothers for the purpose of providing physical examinations and associated testings for all uniform personnel of the Fire Department for a period of three years (January 1, 2013 to December 31, 2015);

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: That the recitals set forth herein above are incorporated herein by reference.

SECTION 2: That the City Council accepts the proposal submitted by Alexian Brothers Medical Group for the purpose of conducting physical examinations and associated testings for all uniformed personnel of the Fire Department for a three (3) year period (January 1, 2013 to December 31, 2015), a copy of which is attached hereto and made part hereof as Exhibit "A."

SECTION 3: That the Director of Finance is hereby authorized to issue payment to Alexian Brothers Medical Group, 1060 South Elmhurst Road, Mount Prospect, Illinois 60056 in

an estimated amount of \$29,090.00 for the 2013 calendar year, \$29,342.00 for the 2014 calendar year, and \$29,510.00 for the 2015 calendar year.

SECTION 4: That this Resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this ____ day of _____, 2012.

APPROVED this ____ day of _____, 2012.

VOTE: AYES ____ NAYS ____ ABSENT ____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel