

080376

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MILWAUKEE FIRE DEPARTMENT,
THE MILWAUKEE PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL 215,
AND
DOCTOR ROBERT T. ADLAM**

THIS AGREEMENT is made and entered into this 1st day of August, 2008, by and between the City of Milwaukee, a municipal corporation organized under the laws of the State of Wisconsin (the "City"), acting through the Milwaukee Fire Department ("MFD"); the Milwaukee Professional Fire Fighters Association, Local 215 ("Local 215"); and Doctor Robert T. Adlam (the "Consultant"), (hereinafter, collectively, the "Parties").

WHEREAS, MFD and Local 215 desire to retain the professional services of the Consultant; and

WHEREAS, the Consultant desires to provide professional services to the City and Local 215 upon the terms and conditions hereinafter set forth; and

WHEREAS, the Consultant represents himself as being capable, experienced, and qualified to undertake and perform those services set forth herein pursuant to the terms and conditions of this Agreement as an independent contractor and not as an employee of the City or Local 215; and

WHEREAS, pursuant to Resolution File No. 080376, adopted on the 17th day of July, 2008, the Common Council of the City authorized MFD's execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the City, Local 215, and the Consultant promise and agree as follows:

**ARTICLE I
Retention of Services**

The City and Local 215 hereby agree to engage the Consultant and the Consultant hereby agrees to personally perform, as an independent contractor and not as an employee of the City or Local 215, the services hereinafter set forth, all in accordance with the terms and conditions of this Agreement.

**ARTICLE II
Term of Agreement and Early Termination**

2.1. Term. The term of this Agreement shall commence on August 1, 2008. Each Party shall have the right to terminate this Agreement for any reason by giving written notice to the other Parties of such termination and specifying the effective date, at least ten calendar days before the effective date of such termination.

**ARTICLE III
Scope of Services**

3.1 The Consultant is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth herein.

(a) The Consultant shall attend weekly "sick call" meetings, currently held on Tuesday mornings, to provide medical consultation and services to employees of the MFD and members of Local 215 on extended injury.

(b) The Consultant shall provide medical consultation and services to employees of the MFD and members of Local 215 in conjunction with the "return to work" light duty program.

(c) The Consultant shall respond to large alarms to provide medical treatment to MFD employees and members of Local 215 at the scene.

(d) The Consultant shall assist with other similar projects at the request of the Chief of the MFD.

ARTICLE IV
Compensation and Conditions of Payment

4.1. Not to Exceed Amount. Payment to the Consultant under this Agreement shall not exceed \$2,000 per month, inclusive of expenses; up to \$1,000 from the City and up to \$1,000 from Local 215. The City and Local 215 may from time to time amend this amount upon mutual agreement in the event the City and Local 215, in their discretion, deem that additional funds are needed to perform the work described in Article III of this Agreement, or the Parties, by mutual agreement, increase the work to be performed by the Consultant under this Agreement.

4.2. Conditions of Payment.

(a) Documentation of Expenses. Upon receipt of a properly submitted monthly invoice and a determination by the City that the Consultant is entitled to payment pursuant to the terms and conditions of this Agreement, the City shall make payment to the Consultant pursuant to the City's Prompt Payment Policy which is set forth in section 4.2(b) herein. The Consultant shall also submit monthly invoices to Local 215, and Local 215 shall make payment to the Consultant after a determination that the Consultant is entitled to payment pursuant to the terms and conditions of this Agreement.

(b) Prompt Payment Policy. Payments due the Consultant from the City under this Agreement shall be made promptly upon submission of the documentation set forth in section 4.2(a) above, subject to the City's Prompt Payment policy. The City, as a matter of policy, shall strive to pay all timely and properly completed invoices within thirty days of submission. Payment to the Consultant will be deemed timely if the payment is mailed, delivered, or transferred within sixty days after receipt of a properly completed and undisputed invoice or receipt and acceptance of the service under this Agreement, whichever is later. If the City does not make payment by the sixtieth calendar day, the City shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month, unless the City disputes the amount of the invoice.

4.3. Additional Fringe or Employee Benefits. The Consultant shall not receive nor be eligible for any fringe benefits or any other benefits to which City or Local 215 employees are entitled or are receiving.

4.4. Taxes, Social Security, Insurance, and Government Reporting. Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of the Consultant receiving payment under this Agreement shall be the sole responsibility of the Consultant.

ARTICLE V
Standards of Performance

5.1. Degree of Care. The Consultant agrees that the performance of the Consultant's work, services and the results therefrom, pursuant to the terms, conditions and agreements of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances providing like services.

5.2. Fully Licensed. The Consultant represents that he has obtained and will hold any and all licenses required by federal, state, and local laws, regulations, and ordinances to provide the services set forth in this Agreement.

5.3. Conformance to Laws. The Consultant agrees to abide by all federal, state, and local laws as well as all MFD rules and all provisions of this Agreement.

ARTICLE VI
Notices

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered to be given and received in all respects when personally delivered, when sent by facsimile (transmission confirmed), one day after sent by reputable overnight courier service or three days after deposited in the United States mail, postage prepaid, at the following addresses (or at such other address for a Party as shall be specified by like notice):

If to the City, to:

Assistant Chief Brian Glassel
711 W. Wells St., 3rd Floor
Milwaukee, WI 53233
Phone: (414) 286-8946
Fax: (414) 286-5213
Email: bglass@milwaukee.gov

If to Local 215, to:

President Bobbie Webber
5625 W. Wisconsin Ave.
Milwaukee, WI 53213
Phone: (414) 259-8000
Fax: (414) 259-0375
Email: webber@local215.com

If to the Consultant, to:

Dr. Robert T. Adlam
923 E. Kilbourn Ave., #702
Milwaukee, WI 53202
Phone: (414) 406-4203
Fax: (414) 286-5213
Email: firedoc494@sbcglobal.net

ARTICLE VII **Reports and Records**

7.1. **Records.** The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement in accordance with accepted applicable professional practices. The Parties understand that some of these books, records, documents, and evidence may constitute medical records which the Consultant is required to maintain, distribute, release, and/or hold confidential as is required by federal laws or regulations, including but not limited to, the Health Insurance Portability and Accountability Act, (HIPAA).

7.2. **Public Records Law.** The Parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provision of Wis. Stat. § 19.21, *et seq.* Consultant acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that the Consultant must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Agreement.

7.3. **Reports.** At such times and in such forms as the City may require, there shall be furnished to the City by the Consultant such statements, records, reports, data, and information as the City may legally request pertaining to matters covered by this Agreement. Such statements, records, reports, data, and information shall be submitted to and be the exclusive property of the City, which shall have the right to use them for any purpose without any further compensation to the Consultant, other than herein provided. The Consultant further agrees that such statements, records, reports, data, and information shall not be made available to any individual or organization without the City's prior written approval.

7.4. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of its records as the City may legally request with respect to all matters covered by this Agreement and the Consultant will permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions or employment, and other data relating to all matters covered by this Agreement.

ARTICLE VIII
Conflicts of Interest

8.1. Interest in Contract. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

8.2. Interest of Other Public Officials. No member of the governing body of the City and no other public official of the City who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement shall have any personal interest, direct or indirect, in this Agreement.

8.3. Interest of Consultant. The Consultant covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder.

ARTICLE IX
Insurance and Indemnification

9.1. Insurance. The Consultant shall, at his own expense, purchase and maintain professional liability insurance coverage at all times during the performance of this Agreement in the amount of at least \$1,000,000 per occurrence and at least \$3,000,000 annual aggregate. Upon request, the Consultant shall provide the City with certificates of insurance evidencing the insurance required hereunder. The Consultant must also comply with all applicable provisions of Wisconsin Statutes Chapter 655.

9.2. Indemnification. The Consultant shall indemnify, defend, and save harmless the City and/or Local 215, and their officers, employees, and agents, from and against any and all claims, causes of action, losses, liabilities, costs, damages, judgments, penalties, and obligations, including attorneys fees, caused by the Consultant's malpractice or any negligent or intentional act of the Consultant in the performance of this Agreement. The City and/or Local 215 shall tender the defense of any claim or action at law or in equity to the Consultant or the Consultant's insurer, and upon such tender, it shall be the duty of the Consultant or the Consultant's insurer to defend such claim or action on behalf of the City and/or Local 215 without cost or expense to the City and/or Local 215.

ARTICLE X
Discrimination Prohibited

Pursuant to law, it is unlawful and the Consultant agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with or perceived affiliation with any of these protected categories; not to discriminate for the same reasons in regard to tenure, terms, or conditions of employment; not to deny promotion or increase in compensation for these reasons; not to adopt or enforce any rule or employment policy which discriminates between employees on account of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with or perceived affiliation with any of these protected categories; not to see such information as to any employee as a condition of employment; and not to penalize any employee or discriminate in the selection of personnel for training on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with or perceived affiliation with any of these protected categories.

ARTICLE XI
Additional Provisions

11.1. Section Headings. The headings in this Agreement are for purposes of convenience and ease of reference only and shall not be construed to limit or otherwise affect the meaning of any part of this Agreement.

11.2. Severability. The Parties agree that if any provision of this Agreement shall under any circumstances be deemed invalid or inoperative, this Agreement shall be construed with the invalid or inoperative provision deleted, and the rights and obligations of the parties shall be construed and enforced accordingly.

11.3. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto relating to the subject matter hereof, and all prior agreements, correspondence, discussions and understandings of the Parties (whether oral or written) are merged herein and made a part hereof, it being the intention of the Parties hereto that this Agreement shall serve as the complete and exclusive statement of their agreement together.

11.4. No Additional Waiver Implied. The failure of any Party to insist, in any one or more instance, upon performance of any of the terms, covenants or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by any other Party hereto but the obligation of such other Party with respect to such future performance shall continue in full force and effect.

11.5. Amendment. This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by the Parties.

11.6. Applicable Law and Venue. This Agreement and all questions arising in connection herewith shall be governed by and construed in accordance with the internal laws of the State of Wisconsin, without regard to principles of conflicts of law thereunder. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in Milwaukee County for matters arising under state law and in the Eastern District of Wisconsin for matters arising under federal jurisdiction.

11.7. Independent Contractor. In performing its obligations under this Agreement, the Consultant shall act as an independent contractor solely for its own account and not as an agent, representative or employee of the City or Local 215.

11.8. Assignment. This Agreement shall be binding on the heirs, successors and assigns of each Party hereto. The employment by the City and Local 215 of the Consultant to perform the services set forth in this Agreement is a personal contract and the Consultant shall not assign, sublet or transfer the Consultant's interest or obligations under the provisions of this Agreement without the prior written consent of the City and Local 215. Notwithstanding the foregoing, claims for money due or to become due to the Consultant from the City and/or Local 215 under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notices of any assignment or transfer shall be promptly furnished to the City and Local 215.

11.9. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day, month and year set forth above.

CONSULTANT

Robert T. Adlam M.D.
DOCTOR ROBERT T. ADLAM

THE MILWAUKEE PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL 215

Bobbie R. Webber
BOBBIE WEBBER, President

CITY OF MILWAUKEE

Douglas A. Holton
DOUGLAS HOLTON, Fire Chief

COUNTERSIGNED

Michael J. Morris
W. MARTIN MORRIS, Comptroller
DEPUTY
Bh