



GREATER NAPLES FIRE RESCUE DISTRICT
BOARD OF FIRE COMMISSIONERS
Action Item Worksheet

NEW BUSINESS

Agenda Item: III.A.
Subject: Associate Medical Director Agreement
Meeting Date: February 20, 2024
Prepared by: J. Nolan Sapp, Fire Chief

Background

The purpose of this Agreement is to provide for the provision of professional services by the Associate Medical Director to assist the District with implementation of protocols, standards, training, quality improvement, planning for employee health and welfare, and certification/recertification standards in accordance with Chapter 401, Florida Statutes, and Chapter 64J-1, Florida Administrative Code, as they may be amended from time to time.

Funding Source/Financial Impact

The District shall pay the Associate Medical Director the sum of forty-eight thousand dollars (\$48,000.00) per annum (“Compensation”), as full compensation for the services rendered herein. The Associate Medical Director shall not be eligible for any employee benefits other than this compensation.

Recommendation

Staff recommends moving ahead with the contractual services of Scott Dunavant MD. as our Associate Medical Director. The Associate Medical Director will work in conjunction with the EMS Chief under the office of the Fire Chief.

Potential Motion

I move to support Staff’s recommendation and enter into contractual services with Scott Dunavant MD as our Associate Medical Director.

Attachments

1. Associate Medical Director Contract

ASSOCIATE MEDICAL DIRECTOR CONTRACT BETWEEN
GREATER NAPLES FIRE RESCUE DISTRICT
AND DR. Scott Dunavant, MD

THIS ASSOCIATE MEDICAL DIRECTOR CONTRACT, hereinafter referred to as the "Contract", is made this ___ day of _____ 2024 ("Effective Date") by and between the Greater Naples Fire Rescue District through its Board of Fire Commissioners, whose address is 14575 Collier Boulevard, Naples, FL 34119, hereinafter referred to as the "District", and Scott Dunavant, MD, whose address is 14607 Summer Rose Way, Ft. Myers, FL 33919, hereinafter referred to as "Associate Medical Director."

WITNESSETH

WHEREAS, the District is an independent fire control and rescue district created and existing under the laws of the State of Florida, particularly Chapter 2014-240, Laws of Florida, as amended, and has all powers and authorities enumerated therein and in Chapters 189 and 191, Florida Statutes; and

WHEREAS, Section 191.008, Florida Statutes, authorizes independent fire control and rescue districts to establish and maintain emergency medical and rescue response services and acquire and maintain rescue, medical, and other emergency equipment, pursuant to the provisions of chapter 401; and

WHEREAS, the District is responsible for providing fire and emergency medical services ("EMS") within its boundaries; and

WHEREAS, Florida Statutes and regulations require that any licensed advanced life support ("ALS") service provider have a medical director in order to be compliant with such laws; and

WHEREAS, the Associate Medical Director is a duly licensed physician in the State of Florida who is specially trained in the field of emergency medicine and desires to be the District's Associate Medical Director; and

WHEREAS, the Associate Medical Director recognizes that the District may be contracting with multiple medical doctors to assist it with the provision of professional services.

NOW THEREFORE, in consideration of the promises and the mutual covenants hereinafter set forth, the parties hereto agree as follows:

Section 1. RECITALS. The foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. PURPOSE OF AGREEMENT. The purpose of this Agreement is to provide for the provision of professional services by the Associate Medical Director to assist the District with implementation of protocols, standards, training, quality improvement, planning for employee health and welfare, and certification/recertification standards in accordance with Chapter 401, Florida Statutes, and Chapter 64J-1, Florida Administrative Code, as they may be amended from time to time.

Section 3. LICENSE. The Associate Medical Director is a duly licensed physician in the State of Florida and shall maintain his State of Florida medical license in full force and effect during the term of this Contract. The Associate Medical Director shall also be American Board of Emergency Medicine certified in emergency medicine. If for any reason during the term of this Contract, the Associate Medical Director loses his license to practice medicine in the State of Florida or his board certification, this Contract shall immediately become null and void.

Section 4. ADDITIONAL LICENSES. The Associate Medical Director agrees to obtain and maintain throughout the term of this Contract all such licenses as are required to do business in the State of Florida and in Collier County, Florida, including but not limited to, all licenses required by any State Board or government agency responsible for regulating and licensing the professional services to be provided and performed by the Associate Medical Director.

Section 5. DUTIES AND RESPONSIBILITIES OF THE ASSOCIATE MEDICAL DIRECTOR.

- a. The Associate Medical Director shall provide the professional services as set forth in the Scope of Services, attached and incorporated as Exhibit A, in accordance with Chapter 401, Florida Statutes, and Chapter 64J-1, Florida Administrative Code, as they may be amended from time to time.
- b. The Associate Medical Director shall maintain adequate records and supporting documentation that reflects his services under this Contract.
- c. The Associate Medical Director shall participate in a regional or statewide physician group involved in pre-hospital care and, upon request by the District, shall provide documentation of active participation in a regional or statewide physician group involved in pre-hospital care.
- d. The Associate Medical Director shall cooperatively work with other contractors of the District that are also providing professional services related to the provision of ALS services by the District or the District's training center.
- e. The Associate Medical Director shall participate as a crew member on a District apparatus/vehicle for a minimum of ten (10) hours per year.
- f. The Associate Medical Director will report to the District's Fire Chief in the performance of these services
- g. If the District is required to contract with the Collier County Medical Director to serve as the District Medical Director as part of the certificate of public convenience and necessity approval process, then the Associate Medical Director understands and agrees that all of the legal duties and responsibilities of a medical director as set forth in Chapter 401, Florida Statutes, and applicable regulations, related to the provisions of ALS services by the District shall remain with the County Medical Director/District Medical Director at all times.

Section 6. PATIENT RECORDS. The District shall make available, within two (2) days of a written request, any and all medical records, reports, documents, and other relevant materials requested by the Associate Medical Director. This includes all run reports, medical test results, recordings on audio or visual tape, and any other reasonably available similar information.

Section 7. CONFIDENTIAL COMMUNICATIONS. The Associate Medical Director shall comply with the provisions of Chapter 119, Florida Statutes, the Health Insurance

Portability and Accountability Act ("HIPAA"), Health Information Technology for Economic and Clinical Health requirements, the Florida Information Protection Act, and any other federal and state applicable laws relating to records or confidentiality of patient records. The Associate Medical Director shall execute a business associate agreement with the District, similar to the agreement attached as Exhibit B. Except as may be provided by general law, the District agrees to keep all medical records confidential and allow no communication of records or patient information without a written release from the patient. The District agrees to comply with all applicable federal and state requirements.

Section 8. REPORT. The District agrees to give the Associate Medical Director full and detailed reports regarding any case that it reasonably believes has the potential for legal action against the District or its employees pertaining to the delivery of EMS within five (5) days of the incident.

Section 9. TERM OF CONTRACT. The term of this Contract shall be one (1) year from the Contract's Effective Date. The parties agree that the term of the Contract shall be automatically renewed on an annual basis for three (3) additional one (1) year terms with the same terms, conditions, and obligations as set forth herein, unless terminated pursuant to Section 10.

Section 10. TERMINATION. This Contract may be terminated by either party, with or without cause, upon sixty (60) days written notice to the other party of such party's intention to terminate the Contract or pursuant to section 3 of this Contract.

Section 11. COMPENSATION. The District shall pay the Associate Medical Director the sum of thirty-five thousand dollars (\$48,000.00) per annum ("Compensation"), as full compensation for the services rendered herein. The Associate Medical Director shall not be eligible for any employee benefits other than this compensation. The Compensation shall be paid to the Associate Medical Director in twelve (12) equal monthly payments commencing with the first day of the month following the Effective Date, with each monthly payment being payable by the 10th of each month. The Compensation shall increase by two and one-half percent (2½%) upon the annual renewal of the Contract. In the event of the termination of this Contract, the Associate Medical Director's compensation shall be prorated on the basis of the number of days elapsed from the Effective Date divided

by three hundred sixty-five (365).

Section 12. INDEPENDENT CONTRACTOR. The Associate Medical Director shall be an independent contractor of the District.

Section 13. LIABILITY AND REMEDIES IN BREACH OF CONTRACT. It is recognized that the District is statutorily required to employ or contract a medical director to provide ALS within its boundaries. Accordingly, the Associate Medical Director shall not refuse to perform these services during the term of this Contract so long as he is able to so perform, and the District shall have the right to specific performance of the provisions of this Contract. In addition, the Associate Medical Director shall be liable to the District for his unreasonable failure or refusal to perform the services required hereunder.

Section 14. INSURANCE. The District shall pay for and maintain professional liability insurance for the benefit of the Associate Medical Director similar to the professional liability insurance the District maintains for its paramedics and others during the term of this Contract. The District shall be named as an additional insured on the certificate of insurance for the policy. The provision of insurance, nor any provision, term, or condition of this Contract shall be construed as a waiver by the District of any rights provided for by any provision of law, including but not limited to Section 768.28, Florida Statutes.

Section 15. LEGAL EXPENSES OF ASSOCIATE MEDICAL DIRECTOR. The District agrees to reimburse the Associate Medical Director for any reasonable legal expenses and costs incurred by the Associate Medical Director in the performance of his duties as set forth herein, including without limitation any expenses and costs associated with legal opinions or assistance in the interpretation, application, and compliance with Florida law and associated regulations and litigation expenses.

Section 16. APPLICABLE LAWS AND JURISDICTION. Unless otherwise specified, the laws, rules, and regulations of the State of Florida shall govern this Contract. In the event

of a dispute, venue for any suit involving this Contract shall be in Collier County, Florida if filed in state court and in the Southern District of Florida if filed in federal court.

Section 17. ATTORNEY FEES. In the event there is litigation arising under or related to this Contract, each party shall pay its own attorney's fees and expenses incurred in enforcing the Contract.

Section 18. NOTICES. All notices, demands, requests, and other communications shall be deemed sufficient and properly given, if in writing and delivered in person to the following addresses, via facsimiles, or sent by certified or registered mail, postage prepaid with return receipt requested, at such addresses; provided if such notices, demands, requests, or other communications are sent by mail, they shall be deemed as given on the third day following such mailing that is not a Saturday, Sunday, or day that United States mail is not delivered:

District:	Fire Chief Greater Naples Fire Rescue District 14575 Collier Boulevard Naples, FL 34119
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Associate Medical Director:	Scott Dunavant, MD 7868 Classic Drive Ft. Myers, FL 33919
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Any party may, by like notice, designate any further or different address to which subsequent notices shall be sent. Any notices signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee.

Section 19. CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP. The Associate Medical Director represents that he does not presently have an interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. Nothing in this Contract shall be

interpreted as preventing the Associate Medical Director from being employed in any other capacity, including, but not limited to the operation of a medical practice, the employment as a staff member of any hospital, or operating any other business. However, the Associate Medical Director shall not accept any employment or enter into any contractual relationship that would create a conflict between such interest and the performance of his duties hereunder. The Associate Medical Director shall only work in this capacity for the District.

Section 20. AMENDMENTS. No modification or amendment to this Contract shall be valid or binding upon the parties, unless in writing, and executed by both parties.

Section 21. SUCCESSOR. The Contract shall be binding upon the successors of the District.

Section 22. WAIVER. Unless otherwise specifically provided by the terms of this Contract, no delay or failure to exercise a right resulting from any breach of this Contract shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in this Contract is breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive, either expressed or impliedly, any other breach under this Contract.

Section 23. SEVERABILITY. In the event any provision of this Contract shall, for any reason, be determined invalid, illegal, or unenforceable in any respect, the parties shall negotiate in good faith and agree to such amendments, modifications, or supplements to this Contract or such other appropriate actions as shall, to the maximum extent practicable in the light of such determination implement and give effect to the intentions of the parties as reflected herein, and other provisions of this Contract, as amended, modified, supplemented, or otherwise affected by such action, shall remain in full force and effect.

Section 24. NO THIRD PARTY BENEFICIARY. Nothing in this Contract shall be construed to benefit any person or entity not a party to this Contract.

Section 25. DISPUTE RESOLUTION. In the event any dispute or disagreement arises during the course of this Contract, the Associate Medical Director shall fully perform the Scope of Services. The Associate Medical Director is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for proposed dispute resolution to the District's Fire Chief no later than ten (10) days after the precipitating event. The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options. No services shall be delayed or postponed pending resolution of any disputes or disagreements.

Section 26. Associate Medical Director's Representations and Warranties. Associate Medical Director represents and warrants to the District as follows:

- a. Scrutinized Companies. Associate Medical Director is in compliance with Section 287.135, Florida Statutes. As required by Subsection 287.135(5), Florida Statutes, Associate Medical Director certifies that it is not on any of the following lists: 1) Scrutinized Companies that Boycott Israel, 2) Scrutinized Companies with Activities in Sudan, or 3) Scrutinized Companies with Activities in the Iran Petroleum Energy Sector. The District may terminate this Agreement if Associate Medical Director is found to be out of compliance with this statute.
- b. Public Entity Crimes. Associate Medical Director is not on the convicted vendor list for a public entity crime maintained by the Florida Department of Management Services and is in compliance with Sections 287.132 and 287.133, Florida Statutes. Associate Medical Director will remain in compliance with Sections 287.132 and 287.133, Florida Statutes, throughout the term of this Agreement and will notify the District if it becomes non-compliant.
- c. E-Verify. Associate Medical Director is in compliance with Section 448.095, Florida Statutes. As required by Subsection 448.095, Florida Statutes, Associate Medical Director has registered with and uses the E-Verify System to verify the work authorization status of all newly hired employees.

d. Public Records.

1. Duty to Maintain and Provide Records. Associate Medical Director shall keep and maintain all public records required to perform services under this Contract as required by Chapter 119, Florida Statutes, unless they are exempt under Florida law. Associate Medical Director shall ensure that public records that are exempt from public records disclosure are not disclosed except as authorized by law during the term of this Agreement and following its completion if the Associate Medical Director does not transfer the records to the District.

2. IF ASSOCIATE MEDICAL DIRECTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ASSOCIATE MEDICAL DIRECTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE AGENCY'S CUSTODIAN OF PUBLIC RECORDS AT TELEPHONE NUMBER (239) 239-7540, EMAIL ADDRESS: KIVANISEVIC@GNFIRE.ORG, MAILING ADDRESS: 14575 COLLIER BLVD, NAPLES, FL 34119.

3. Post Contract Responsibilities. Upon completion of this contract, Associate Medical Director shall keep and maintain, at no cost, to the District, all public records produced under this Agreement in the possession of the Associate Medical Director or shall transfer them to the District. If the Associate Medical Director transfers all public records to the District, Associate Medical Director shall destroy any duplicate public records. If Associate Medical Director keeps and maintains public records after completion of the contract, the Associate Medical Director shall meet all legal requirements for retaining public records including the rules and retention schedules adopted by the Division of Library and Information Services of the Department of State under Section 119.021(2)(a), Florida Statutes. All records stored electronically must be provided to the District upon request from the District in a format that is compatible with the information technology systems of the District.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above.

**GREATER NAPLES FIRE RESCUE
DISTRICT**

Date

Nick Biondo, Chair

ASSOCIATE MEDICAL DIRECTOR

Date

Scott Dunavant, MD

EXHIBIT A

Scope of Services

The Associate Medical Director duties are in support of the provision of EMS by the District. If applicable, the Associate Medical Director duties are also to further the duties of the County Medical Director/District Medical Director, including assisting the County Medical Director/District Medical Director, and if appropriate the Collier County Deputy Medical Director, if required by the County as part of the certificate of public convenience and necessity process. The Associate Medical Director shall:

1. Oversee the District's patient care quality assurance system to assess the medical performance of paramedics and EMTs, including auditing the performance of District personnel by use of a quality assurance program to include, but not be limited to, a prompt review of patient care records, direct observation, and comparison of performance standards for drugs, equipment, system protocols, and procedures.
2. Participate in quality assurance programs developed by the District and/or any countywide medical directors board or committee.
3. Participate on behalf of the District on the Collier County County-Wide Quality Assurance Committee or any other committee as directed by the Fire Chief.
4. Assist in planning the delivery of EMS to be provided by the District, including the design of vehicles, equipment, supplies, distribution resources, District paramedic and EMT personnel training and medical policy, protocol, planning, and development.
5. Serve as a liaison between the District and the appropriate hospitals, medical societies, practicing physicians, and training facilities in Collier County.
6. Provide such assistance to the District as may be required in the preparation and administration of any grant programs for the establishment and improvement of the District's EMS system.
7. Participate as a member of the District's Safety Committee and provide necessary guidance and direction in support of ensuring a safe workplace for District personnel.
8. Assist in planning the District's response to public health emergencies, including the development and implementation of standard operating guideline and any necessary training of personnel.
9. Participate on behalf of the District on the Collier County Fire and EMS Chiefs EMS Council or any other committee as directed by the Fire Chief.

EXHIBIT B

Business Associate Agreement

**COMBINED HIPAA PRIVACY BUSINESS ASSOCIATE,
HIPAA SECURITY RULE, HITECH ACT
COMPLIANCE AND CONFIDENTIALITY
AGREEMENT**

THIS AGREEMENT is entered into by and between the Greater Naples Fire Rescue District (hereinafter "Covered Entity"), whose address is 14575 Collier Boulevard, Naples, FL 34119, and Scott Dunavant, MD, whose address is 14607 Summer Rose Way, Ft. Myers, FL 33919 (hereinafter "Business Associate"), collectively hereinafter referred to as the "parties." The parties have entered into this Agreement for the purpose of satisfying the Business Associate contract requirements of the regulations at 45 CFR Section 164.502(e) and 164.504(e), issued under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Security Rule, codified at 45 C.F.R Part 164, Subparts A and C. (the "Security Rule"), the Health Information Technology For Economic and Clinical Health Act, enacted in Pub. L. No. 111-05 H.R., 111th Cong. (2009), Title XIII (the "HITECH Act"), as well as the confidentiality requirements contained in Section 401.30, Florida Statutes.

Section 1. Definitions

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR Sections 160.103 and 164.501, and the HITECH Act, Subtitle D.

(a) "Individual" has the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(9).

(b) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and part 164, Subparts A and E.

(c) "Protected Health Information" is defined at 45 CFR Section 160.103 and in the HITECH Act. For purposes of this Agreement, the term refers only to that Protected Health Information received directly or indirectly from, or received or created on behalf of, the Covered Entity.

(d) "Secretary" means the Secretary of the U.S. Department of Health and Human Services or designee.

(e) "Security Incident" means any event resulting in computer systems, networks, or data being viewed, manipulated, damaged, destroyed or made inaccessible by an unauthorized activity. See National Institute of Standards and Technology (NIST) Special Publication 800-61, "Computer Security Incident Handling Guide," Revision 2 or subsequent revision for more information.

Section 2. Obligations and Activities of Business Associate Regarding Protected

Health Information

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by Sections 3, 5, and 6 of this Agreement, or as required by applicable federal or laws of the State of Florida.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to provide access, at the request of Covered Entity or an Individual, and in a prompt and reasonable manner consistent with the HIPAA regulations, to Protected Health Information in a designated record set, to the Covered Entity in order to meet the requirements under 45 CFR Section 164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set that the Covered Entity or an Individual directs or agrees to pursuant to 45 CFR Section 164.526, in a prompt and reasonable manner consistent with the HIPAA regulations.
- (h) Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or at the request of the Covered Entity, to the Secretary in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (i) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528.
- 0) Business Associate agrees to provide to Covered Entity or an Individual an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528, in a prompt and reasonable manner consistent with the HIPAA

regulations.

(k) Business Associate certifies that it is in compliance with all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, at 45 CFR Part 162; and the Annual Guidance as issued by the Secretary pursuant to the HITECH Act, Section 13401. Business Associate further agrees to ensure that any agent, including a subcontractor, that conducts standard transactions on its behalf, will comply with the EDI Standards and the Annual Guidance.

(l) Business Associate agrees to determine the minimum necessary type and amount of Protected Health Information required to perform its services and will comply with 45 CFR Sections 164.502(b) and 514(d).

Section 3. Permitted or Required Uses and Disclosures by Business Associate

(a) Business Associate acknowledges and agrees that Protected Health Information is confidential under State of Florida laws.

(b) Except as expressly permitted in writing by the Covered Entity, Business Associate shall not divulge, disclose, or communicate Protected Health Information or confidential information of Covered Entity employees to any third party for any purpose not in conformity with this Agreement except in accordance with Covered Entity policies and procedures and without prior written approval from the Covered Entity.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR Section 164.504(e)(2)(i)(B).

(d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR Section 164.502(j) (1).

Section 4. Obligations of Covered Entity to Inform Business Associate of Covered Entity's Privacy Practices, and any Authorization or Restrictions

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR Section 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, authorization by Individual or his or her personal representative to use or disclose Protected Health Information, if such changes affect Business Associate's uses or disclosures of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR Section 164.522, if such changes affect Business Associate's uses or disclosures of Protected Health Information.

Section 5. Confidentiality under State Law and Computer Use

(a) Generally. In addition to the HIPAA privacy requirements, Business Associate agrees to observe the confidentiality requirements of Section 401.30, Florida Statutes. In general, the referenced statute provides that records of emergency calls that contain patient examination or treatment information are confidential and exempt from the provisions of Section 119.07(1), Florida Statutes, and may not be disclosed without the consent of the person to whom they pertain unless otherwise statutorily prescribed. Any person who willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation, including those residing or existing internal and external to the Covered Entity's computer system, commits an offense in violation of Section 815.04, Florida Statutes.

Confidentiality requirements protect more than unlawful disclosure of documents. The confidentiality requirements protect the disclosure of all records and information of the Covered Entity, in whatever form, including the copying or verbally relaying of confidential information.

As it relates to computer equipment and systems, Business Associate agrees that it will not:

- i. Operate or attempt to operate any Covered Entity computer equipment without specific authorization from the Covered Entity.
- ii. Disclose any portion of the Covered Entity's computerized system or data with unauthorized individuals.
- iii. Permit any individual to review, examine, or make copies of any report(s) or document(s) in its care, custody or control.

Business Associate agrees that it will access computer systems, equipment and functions only as required for the performance of its duties and responsibilities for the Covered Entity and that it has an up-to-date anti-virus software and firewall running on its computers. In the event Business Associate's password is disclosed, Business Associate will immediately contact IT at Fire District Headquarters at (239)-348-7540 to report the incident and request a new password. Business Associate shall remove any Covered Entity access software before disposing of any computer.

(b) Receipt of a Subpoena. If Business Associate is served with subpoena requiring the production of the Covered Entity's records or information, Business Associate shall immediately contact the Fire Chief of the Covered Entity at (239)-348-7540.

A subpoena is an official summons issued by a court or an administrative tribunal, which requires the recipient to do one or more of the following:

- i. Appear at a deposition to give sworn testimony, and may also require that certain records be brought to be examined as evidence.
- ii. Appear at a hearing or trial to give evidence **as a** witness, and may also require that certain records be brought to be examined as evidence.
- iii. Furnish certain records for examination, by mail or by hand-delivery.

(c) Employees and Agents. Business Associate acknowledges that the confidentiality

requirements herein apply to all its employees, agents and representatives. Business Associate assumes responsibility and liability for any damages or claims, including state and federal administrative proceedings and sanction. against the Covered Entity, including costs and attorneys' fees, resulting from the breach by Business Associate of the confidentiality requirements of this Agreement.

Section 6. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA, the Privacy Rule, the HITECH Act, or the laws of the State of Florida, if done by Covered Entity.

Section 7. Term and Termination

(a) Term. The Term of this Agreement shall begin on the last date set forth on the signature blocks below and shall terminate on March 31, 2017 unless otherwise extended by both parties in writing.

(b) Termination for Cause. Without limiting any other termination rights the parties may have, upon Covered Entity's knowledge of a material breach by Business Associate of a provision under this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If the Agreement of Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, the Covered Entity shall have the right to immediately terminate the Agreement. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c) Return or Destruction of PHI upon Termination. Within sixty (60) days after termination of the Agreement for any reason, or within such other time period as mutually agreed upon in writing by the parties, Business Associate shall return to Covered Entity or destroy all Protected Health Information maintained by Business Associate in any form and shall retain no copies thereof. Business Associate also shall recover, and shall return or destroy with such time period, any Protected Health Information in the possession of its subcontractors or agents. Within fifteen (15) days after termination of the Agreement for any reason, Business Associate shall notify Covered Entity in writing as to whether Business Associate intends to return or destroy such Protected Health Information. If Business Associate elects to destroy such Protected Health Information, it shall certify to Covered Entity in writing when and that such Protected Health Information has been destroyed. If any subcontractors or agents of the Business Associate elect to destroy the Protected Health Information, Business Associate will require such subcontractors or agents to certify to Business Associate and to Covered Entity in writing when such Protected Health Information has been destroyed. If it is not feasible for Business Associate to return or destroy any of said Protected Health Information, Business Associate shall notify Covered Entity in writing that Business Associate has determined that it is not feasible to return or destroy the Protected Health Information and the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations, and restrictions set forth in this Agreement to Business Associate's use or disclosure of any Protected Health Information retained after the termination of this

Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the Protected Health Information not feasible. If it's not feasible for Business Associate to obtain, from a subcontractor or agent, any Protected Health Information in the possession of the subcontractor or agent, Business Associate shall provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations, and restrictions set forth in this Agreement to the subcontractors' or agents' uses or disclosures of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the Protected Health Information not feasible.

Prior to destroying any records hereunder, Business Associate shall obtain written confirmation from the Covered Entity that such actions will not violate the State of Florida's or the Covered Entity's record retention policies.

Section 8. HIPAA Security Rule

(a) Security of Electronic Protected Health Information. Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information (as defined in 45 C.F.R. Section 160.103) that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity consistent with the Security Rule.

(b) Reporting Security Incidents. Business Associate will report to the Covered Entity any Security Incident of which Business Associate becomes aware that is (1) a successful unauthorized access, use or disclosure of any Electronic Protected Health Information; or (2) a successful major (a) modification or destruction of any Electronic Protected Health Information or (b) interference with system operations in an information system containing any Electronic Protected Health Information. Upon the Covered Entity's request, Business Associate will report any incident of which Business Associate becomes aware that is a successful minor (a) modification or destruction of any Electronic Protected Health Information or (b) interference with system operations in an information system containing any Electronic Protected Health Information.

(c) Compliance Date. The parties to this Agreement will comply with Sections (a) through (c) of this Section 8 by the last date set forth in the signature blocks below.

Section 9. HITECH Act Compliance

In the event of any inconsistency or conflict between requirements of HIPAA, HIPAA Security Rule and HITECH Act, the more stringent provision shall apply.

(a) Business Associate shall make a good faith effort to identify and report any use or disclosure of Protected Health Information not provided for in this Agreement.

(b) Reporting to Covered Entity. Business Associate will report to the Covered Entity, within ten (10) business days of discovery, any use or disclosure of Protected Health

Information not provided for in this Agreement of which the Business Associate is aware. The Business Associate will report to the Covered Entity, within twenty-four (24) hours of discovery, any Security Incident of which Business Associate is aware. A violation of this paragraph shall be a material violation of this Agreement. Such notice shall include the identification of each individual whose unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach.

(c) Reporting to Individuals. In the case of a breach of Protected Health Information discovered by Business Associate, Business Associate shall first notify the Covered Entity of the pertinent details of the breach and upon prior approval of the Covered Entity shall notify each individual whose unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed as a result of such breach. Such notification shall be in writing by first-class mail to the Individual (or the next of kin if the individual is deceased) at the last known address of the individual or next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. Where there is insufficient, or out-of-date contract information (including a phone number, email address, or any other form of appropriate communication) that precludes written (or, if specifically requested, electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are ten (10) or more Individuals for which there is insufficient or out of date contact information, a conspicuous posting on the Web site of the covered entity involved or notice in major print of broadcast media, including major media in the geographic areas where the individuals affected by the breach likely reside. In any case deemed by the Business Associate to require urgency because of possible imminent misuse of unsecured Protected Health Information, Business Associate may also provide information to individuals by telephone or other means, as appropriate.

(d) Reporting to Media. In the case of a breach of Protected Health Information discovered by the Business Associate where the unsecured Protected Health Information of more than five hundred (500) persons is reasonably believed to have been, accessed, acquired, or disclosed, after prior approval by the Covered Entity, Business Associate shall provide notice to prominent media outlets serving Collier County.

(e) Reporting to Secretary of Health and Human Services. Business Associate shall cooperate with the Covered Entity to provide notice to the Secretary of Health and Human Services of unsecured Protected Health Information that has been acquired or disclosed in a breach. If the breach was with respect to five hundred (500) or more Individuals, such notice must be provided immediately. If the breach was with respect to less than five hundred (500) Individuals, the Business Associate may maintain a log of such breach occurring and annually submit such log to the Covered Entity so that it may satisfy its obligation to notify the Secretary of Health and Human Services documenting such breaches occurring in the year involved.

(f) Content of Notices. All notices required under this Agreement shall include the content set forth Section 13402(f), Title XIII of the American Recovery and Reinvestment Act of 2009.

(g) Financial Responsibility. Business Associate shall be responsible for all costs related to the notices required under this Agreement.

(h) Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health information in violation of this Agreement.

Section 10. Regulatory References

A reference in this Agreement to a section in the Privacy Rule, the Security Rule or the HITECH Act means the section as in effect or as amended, and for which compliance is required.

Section 11. Amendment

Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, Standard Transactions, the security of Health Information, or other aspects of HIPAA-AS or the HITECH Act applicable or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either party may, by written notice to the other party, amend this Agreement in such manner as such party determines necessary to comply with such law or regulation. If the other party disagrees with such amendment, it shall so notify the first party in writing within thirty (30) days of the notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, then either of the parties may terminate the Agreement on thirty (30) days written notice to the other party.

Section 12. Survival

Business Associate agrees that its obligations under this Agreement with regard to Protected Health Information and all other provisions in this Agreement that expressly or customarily survive the termination or expiration of the Agreement shall continue in effect after the Agreement is terminated or expires.

Section 13. Interpretation

Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and the confidentiality requirements of the State of Florida, including Section 401.30, Florida Statutes.

Section 14. Disclaimer of Third Party Beneficiaries

This Agreement is solely for the benefit of the parties to this Agreement. No right or cause of action shall accrue upon or by reason hereof inure to or for the benefit of any third party.

Section 15. Governing Law

The laws of the State of Florida shall govern the validity, interpretation, construction and

performance of this Agreement to the extent not preempted by the Privacy Rules or other applicable federal law. In the event of a dispute, venue for any suit involving this Agreement shall be in Collier County, Florida if filed in state court and in the Southern District of Florida if filed in federal court.

Section 16. Indemnification and Performance Guarantees

The Business Associate shall indemnify, defend, and save harmless the Covered Entity and Individuals for any financial loss as a result of claims brought by third parties and which are caused by the failure of Business Associate, its officers, directors or agents to comply with the terms of this Agreement.

Section 17. Assignment

Business Associate shall not assign either its obligations or benefits under this Agreement without the expressed written consent of the Covered Entity, which shall be at the sole discretion of the Covered Entity.

Section 18. Notices

All notices, demands, requests, and other communications hereunder shall be deemed sufficient and properly given, if in writing and delivered to the above addresses, or via facsimile, or sent by certified or registered mail, postage prepaid with return receipt requested, at such addresses; provided, if such notices, demands, requests or other communications are sent by mail, they shall be deemed as given on the third day following such mailing which is not a Saturday, Sunday, or a day on which United States mail is not delivered. Any party may, by like notice, designate any further or different address to which subsequent notices shall be sent. Any notices hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee.

Section 19. Waiver

Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in this Agreement is breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive, either expressed or impliedly, any other breach under this Agreement.

Section 20. Severability

In the event any provision of this Agreement shall, for any reason, be determined invalid, illegal or unenforceable in any respect the parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in the light of such determination implement and give effect to the intentions of the parties as reflected herein,

and the other provisions of this Agreement, as amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this combined HIPAA Privacy Business Associate, HIPAA Security Rule, HITECH Act Compliance and Confidentiality Agreement, on the date(s) set forth below.

GREATER NAPLES FIRE RESCUE DISTRICT

Date

Nick Biondo, Chair

ASSOCIATE MEDICAL DIRECTOR

Date

Scott Dunavant, MD