

AGREEMENT

THIS PROFESSIONAL SERVICE AGREEMENT, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **LOUISVILLE METRO POLICE DEPARTMENT**, herein referred to as "**METRO GOVERNMENT**", and **COMMUNITY MEDICAL ASSOCIATES, INC., d/b/a NORTON CHILDREN'S MEDICAL GROUP** with its principal place of business at 4801 Olympia Park Plaza, Suite 3000, Louisville, Kentucky 40241, herein referred to as "**Consultant**",

WITNESSETH:

WHEREAS, the Metro Government wishes to obtain expert clinical forensic services in the area of pediatric forensic medicine; and

Whereas, Consultant will use a team consisting of forensic physicians and forensic nurses directed by a forensic pediatrician which has the experience, expertise and qualifications necessary to provide these services; and

Whereas, pursuant to KRS 45A.380, the Metro Government has determined that competition is not feasible, and that this Agreement is for the services of licensed professionals:

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

I. SCOPE OF PROFESSIONAL SERVICES

A. Consultant shall, at the request of the Metro Government, provide services under the terms of this professional Agreement. The Consultant's work product may be reviewed from time to time by the Metro Government for purposes of determining that the services provided are within the scope of this Agreement.

B. Consultant, while performing the services rendered pursuant to this Agreement, may incidental thereto utilize agents or employees to it. However, such use must be documented in the monthly invoice submitted for those services rendered.

C. If from time to time Consultant needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then Consultant shall notify the Louisville Metro Office of Management and Budget of this need and arrangements may be made for that contingency. However, at no time shall the Metro Government make available its resources without the full consent and understandings of both parties.

D. The services of Consultant shall include but not be limited to the following:

1. Consultant shall provide clinical forensic services and consultation of children under the terms of this Agreement as requested by the Louisville Metro Police Department utilizing licensed providers or staff members in Consultant's Forensic Medicine Department. Consultant's work product may be reviewed from time to time by the Metro Government for purposes of insuring that the services provided are within the scope of this Agreement. Services provided shall include:

- a. Examination of living persons at the request and authorization of sworn police officers concerning injuries sustained as a result of allegations of physical injury to children. Priority shall be given equally among these victims in scheduling examinations. The examination of the patient or records will be performed by forensic physicians or forensic nurses from Consultant.
- b. Examinations will be performed at sites appropriate for medical treatment and/or evaluation.

- c. Examinations are provided on a daily basis. At least one member of Consultant's team shall be on call and available for consultation twenty-four (24) hours per day. Photographs and examinations will be scheduled by the Clinical Forensic Team Member as deemed necessary after phone consultation.
- d. Clinical Forensic Medicine Team Call Schedules shall be distributed to the Louisville Metro Police Department.
- e. Clinical Forensic Medicine Logs of monthly activities shall be provided to the Louisville Metro Police Department by the 10th day of the following month. An annual report of the activities of the Consultant shall additionally be provided to the Louisville Metro Police Department by the 10th day of the following month ending the Agreement duration.
- f. If criminal prosecution occurs as a result of police investigation and the forensic examination, a member of the Consultant's team shall be available for consultation with prosecuting attorneys and to testify at trial, or other court proceedings related to the prosecution.
- g. The work product or deliverables of the Consultant shall include but not be limited to the following: written reports, diagrams, and photographs, which shall be provided at LMPD's request without additional charge.
- h. Consultant agrees to provide 8 hours per year education about recognition and assessment of abuse and neglect to LMPD officers at no cost to LMPD.

II. FEES AND COMPENSATION

A. Consultant shall be reimbursed for professional services rendered according to the terms of this Agreement in an amount equal to **THREE HUNDRED DOLLARS (\$300.00)** per hour billed in ¼ hour increments. Total compensation payable

to Consultant for services rendered pursuant to this Agreement shall not exceed **ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000.00)**.

B. Payment shall only be made pursuant to a detailed invoice; which shall include: the name of the requester, code # if the requester is an LMPD officer, requester's employer agency and division, and a contact phone number. Invoices are to be presented monthly delivered no later than the tenth day of the month after which the service was provided, which invoice shall indicate a descriptive daily accounting of the hours expended in service under the contract and the particular nature of such service. Copies of invoices or receipts for third party charges must be included with the Consultant's invoice when payment is requested. The Metro Government agrees that it shall pay for work performed during the term of this Agreement but not billed for by the Consultant until after this Agreement has ended.

C. The Metro Government shall not reimburse out of pocket expenses under this Agreement.

D. Consultant, to the extent that it provides the same or related services to other parties agrees that it will not charge Metro Government for services for which it is also billing other parties which are of benefit to the other parties. Should services rendered to Metro Government under this agreement be such that those services also benefit another party during the term of this agreement, Consultant agrees to pro-rate its billings to Metro Government appropriately and to provide documentation to all parties to verify the pro-ration of such billings. In no event will the Metro Government pay bills which are considered to be double billing (i.e. billing two different parties for the same work).

III. DURATION

A. This Agreement shall begin July 1, 2023 and shall continue through and including June 30, 2024.

B. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed as invoiced by Consultant. If the Metro Council fails to appropriate funds for the payment of the Metro Government's obligations under this Agreement, the Metro Government's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Metro Government shall deliver notice to Consultant of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

IV. EMPLOYER/EMPLOYEE RELATIONSHIP

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause Consultant to be an officer or official of the Metro Government. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

V. RECORDS-AUDIT

Consultant shall maintain during the course of the work, and retain not less than five years from the date of final payment on this Agreement, complete and accurate records of all of Consultant's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Consultant shall include (without limitation): (a) payroll records accounting for total time distribution of Consultant's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as documentation of electronic payroll deposits, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Consultant's stores stock or capital items; and (c) paid invoices and canceled checks (if applicable) or procurement card supporting documentation for materials purchased and for subcontractors' and any other third parties' charges.

VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

Consultant agrees to indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents, successors in interest agencies, departments, affiliates, and assigns from all claims, damages and losses arising out of or resulting, directly or indirectly, from the Consultant 's (or Consultant's subcontractors if any) performance or breach of the contract provided that such claim, damage, loss, or expense is (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or from negligent acts, errors

or omissions and (2) not caused by the negligent act or omission of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

Louisville/Jefferson County Metro Government agrees to indemnify, hold harmless, and defend Consultant, its parents, affiliates, officers, directors, attorneys, employees, agents, and successors in interest from all claims, damages, and losses arising out of or resulting, directly or indirectly, from the Louisville/Jefferson County Metro Government's performance or breach of the contract provided that such claim, damage, loss, or expense is (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or from negligent acts, errors or omissions and (2) not caused by the negligent act or omission of Consultant. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

VII. REPORTING OF INCOME

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Consultant agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Consultant further agrees to provide such other information to the Metro Government as may be

required by the IRS or the State Department of Revenue. Metro Government acknowledges Consultant's assertion that it is a non-profit tax-exempt corporation.

VIII. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be Franklin Circuit Court, Frankfort, Kentucky. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

IX. AUTHORITY

The Consultant, by execution of this Agreement, does hereby certify and represent that it is qualified to do business in the Commonwealth of Kentucky, has full right, power and authority to enter into this Agreement. Further, Consultant certifies that it has the authority to contract for these services with Metro Government for UofL.

X. CONFLICTS OF INTEREST

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation

therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

XI. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

XII. OCCUPATIONAL HEALTH AND SAFETY

Consultant agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338.

XIII. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

XIV. SEVERABILITY

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision

cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

XV. COUNTERPARTS

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

XVI. CALCULATION OF TIME Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Consultant is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

XVII. CAPTIONS The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

XVIII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS The Consultant shall reveal any final determination of a violation by the Consultant or any subcontractor performing work under this Agreement ("Subcontractor") within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or Subcontractor. The Consultant shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or Subcontractor for the duration of the contract.

XIX. INSURANCE REQUIREMENTS

Consultant shall comply with the insurance requirements attached hereto and incorporated herein as Attachment A.

XX. CHARITABLE PURPOSES The parties acknowledge that they have entered into this agreement after arms' length negotiations in furtherance of NCMG's charitable purposes. If at any time it is determined by NCMG's legal counsel that any provision of this agreement could be deemed by the Internal Revenue Service to be inconsistent with NCMG's charitable purposes, the parties may modify such provision, including any payment or benefits provisions, in a manner designed to eliminate such inconsistency. NCMG's modification shall be made after written notice to Metro Government.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND
LEGALITY CONTINGENT
UPON APPROVAL OF
OF THE APPROPRIATION FOR
THIS CONTRACT BY THE
METRO COUNCIL

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT

DocuSigned by:
Paul Rutherford
MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

DocuSigned by:
Jacquelyn Gwinn-Villaroel
JACQUELYN GWINN-VILLAROE
INTERIM CHIEF OF POLICE

Date: 7/10/2023

Date: 7/19/2023

COMMUNITY MEDICAL ASSOCIATES, INC.
D/B/A NORTON CHILDREN'S MEDICAL
GROUP

By: Doni. 87u

Title: Interim SLP

Date: 7/5/23

Taxpayer Identification No.
(TIN): _____

Louisville/Jefferson County
Revenue Commission Account
No.: _____

Approved as to form and legality:

PSC 2023-xxxx Police with Community Medical Associates (Nortons) for Clinical Forensic Services FY24
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ATTACHMENT A

HOLD HARMLESS AND INDEMNIFICATION CLAUSE AND INSURANCE REQUIREMENTS

I. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

The Contractor shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

II. INSURANCE REQUIREMENTS

Prior to award of contract and commencing work, Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the Commonwealth of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. The Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to **Louisville/Jefferson County Metro Government's Purchasing Division** and approved by the Louisville/Jefferson County Metro Government's Risk Management Division. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting Contractor's indemnification requirements, it is agreed that Contractor shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Louisville/Jefferson County Metro Government (Metro). Metro may require Contractor to supply proof of subcontractor's insurance via Certificates of Insurance, or at Metro's option, actual copies of policies.

- A. The following clause shall be added to the Contractor's (and approved subcontractors) Commercial General Liability Policies:
- "The Louisville/Jefferson County Metro Government, along with its elected and appointed officials, employees, agents, successors, agencies, departments, affiliates, and assigns are included as and deemed an "Additional Insured" with respect to the operations of the Named Insured performed under this contract."**
- B. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on the contractors or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):
1. **COMMERCIAL GENERAL LIABILITY:** via the Occurrence Form, primary and non-contributory, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage and Products/Completed Operations, including:
 - a. Premises - Operations Coverage
 - b. Products and Completed Operations
 - c. Contractual Liability
 - d. Broad Form Property Damage
 - e. Independent Contractors Protective Liability
 - f. Personal Injury
 2. **WORKERS' COMPENSATION** (if applicable): insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and **EMPLOYERS' LIABILITY** - \$100,000 Each Accident/\$500,000 Disease - Policy Limit/\$100,000 Disease - Each Employee.
 3. **PROFESSIONAL LIABILITY** (Medical Malpractice) insurance policy, which includes a minimum limit of liability of \$1,000,000 for each Wrongful Act and \$2,000,000 Aggregate. In the event that the Provider's policy is written on a "Claims Made" Form, the Provider shall, after work has been completed, furnish evidence that the liability coverage has been maintained for at least one year after completion of work, either by submitting renewal policies with a Retroactive Date of not later than the date work commenced under this contract, or by evidence that the Consultant has purchased an Extended Reporting Period Endorsement that will apply to any and all claims arising from work performed under this contract.
- III. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro Government's Risk Management Division.
- IV. **MISCELLANEOUS**
- A. The Contractor shall procure and maintain insurance policies and shall furnish

Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro Government at least fifteen (15) days prior to the expiration of any policy(s).

- B. Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:
Louisville/Jefferson County Metro Government
Department - Louisville Metro Police Department
Procurement Department
611 West Jefferson Street
Louisville, Kentucky 40202
- C. Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:
Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202
- D. CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Contractor shall notify Metro Government's Risk Management Division of any policy cancellation within two business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Contractor shall notify Metro Government's Risk Management Division within two business days. If Contractor fails to notify Metro Government as required by this Agreement, Contractor agrees that such failure shall be a breach of this Agreement. Metro Government reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro Government's Risk Management Division.
- E. Approval of the insurance by Metro Government shall not in any way relieve or decrease the liability of the Contractor hereunder. It is expressly understood that Metro Government does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Contractor.