

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS IS AN AGREEMENT** made as of \_\_\_\_\_, 2022, between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and CARLA CESARIO MEDICAL CONSULTING, LLC, (**PROFESSIONAL**). **OWNER** intends to proceed with Carla Cesario to provide Compliance Auditing of the Mental Healthcare Contract for the Division of Community Corrections (Exhibit “A”). The services are to include those contemplated in the **OWNER**’s Request for Proposal No. 31-2022. The services are hereinafter referred to as the Project.

**OWNER** and **PROFESSIONAL** in consideration of their mutual covenants herein agree in respect of the performance as the **PROFESSIONAL** serving as Compliance Auditor of the Mental Healthcare Contract with the Division of Community Corrections by **PROFESSIONAL** and the payment for those services by **OWNER** as set forth below.

**PROFESSIONAL** was selected by **OWNER** based upon its response to the Request for Proposal No. 31-2022.

**PROFESSIONAL** shall provide monitoring and auditing services of the Mental Healthcare Contract Services with the Division of Communication Corrections for **OWNER** in all phases of the Project to which this Agreement applies, serve as **OWNER'S** representative for the Project as set forth below and shall give professional consultation and advice to **OWNER** during the performance of services hereunder.

### **SECTION 1 - BASIC SERVICES OF PROFESSIONAL**

**PROFESSIONAL** shall perform all services as hereinafter stated which include customary planning and analysis incidental thereto.

The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: RFP No. 32-2022 (Exhibit “A”) and **PROFESSIONAL**’s Response dated June 2022.

To the extent there is conflict among their provisions, the provisions of this Agreement shall take precedence, followed by the provisions of Request for Proposal No. 31-2022 (Exhibit “A”).

This Agreement (consisting of pages 1 to 8 inclusive), together with (Exhibit “A”) and schedules identified above constitutes the entire Agreement between **OWNER** and **PROFESSIONAL** and supersedes all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

The General Provisions of RFP No. 6-2022 are incorporated herein by reference as if fully stated.

## **SECTION 2 - ADDITIONAL SERVICES BY PROFESSIONAL**

- 2.1. The **OWNER** may desire to have the **PROFESSIONAL** perform work or render services in connection with this Project other than provided by (Exhibit "A") of this Agreement. Such work shall be considered as "Additional Services", subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted plans or parts thereof revised, the **PROFESSIONAL** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as "Additional Services" and shall be paid as such.
- 2.2. All "Additional Services" is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

## **SECTION 3 - OWNER'S RESPONSIBILITIES**

### **OWNER shall:**

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **PROFESSIONAL** by placing at its disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **PROFESSIONAL**, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **PROFESSIONAL**.
- 3.4. Designate in writing a person to act as **OWNER'S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER'S** policies and decisions with respect to materials, equipment, elements and systems pertinent to **PROFESSIONAL'S** services.
- 3.5. Give written notice to **PROFESSIONAL** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **PROFESSIONAL'S** services, or any defect in the work of Contractor(s).
- 3.6. Furnish or direct **PROFESSIONAL** to provide, necessary Additional Services as stipulated in Section Two (2) of this Agreement or other services as required.

## **SECTION 4 - PERIOD OF SERVICES**

- 4.1. Time is of the essence. The term of the agreement begins July 1, 2022, and ends on July 1, 2025. The agreement will automatically renew for two (2) additional one (1) year periods if there is no written notice of intent to cancel the agreement.
- 4.2. The provisions of this Section Four (4) and the various rates of compensation for **PROFESSIONAL'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion.
- 4.3. If delays result by reason of acts of the **OWNER** or approving agencies or other causes, which are beyond the control of the **PROFESSIONAL**, an extension of time for such delay will be considered. If delays occur, the **PROFESSIONAL** shall within 30 days from the date of the delay apply in writing to the **OWNER** for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the Project schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the **OWNER** of any of its rights in the Agreement. Section 6.5, under DISPUTES, of this Agreement, shall apply in the event the parties cannot mutually agree upon an extension of time.

In the event that the overall delay resulting from the above described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified therein, the Agreement fee or fees shall be subject to reconsideration and possible adjustment. Section 6.5 of this Agreement shall apply in the event the parties cannot mutually agree upon an adjustment of fee.

- 4.4. If delays result solely by reason of act of the **PROFESSIONAL**, the **PROFESSIONAL** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will reasonably attempt to resolve the delay. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 of this Agreement shall apply. If the delay would prevent complete performance of the project within six (6) months of the time specified herein, **OWNER** shall have the option of canceling the project or otherwise adjusting the scope of service or work and any related fees.

## **SECTION 5 - PAYMENTS TO PROFESSIONAL**

### **5.1 Methods of Payment for Services of PROFESSIONAL**

#### **5.1.1 For Basic Services.**

All costs for services (and travel expenses) are \$14575.00 for the first three years of the initial contract; a ten (10) percent increase will be awarded for each of the last two (2) renewal years of the contract.

**5.2. Times of Payment.**

**5.2.1. PROFESSIONAL** shall submit invoicing, within thirty (30) days after quarterly on-site visit.

**5.3. Other Provisions Concerning Payments.**

**5.3.1.** In the event the Agreement is terminated by the **OWNER** without fault on the part of the **PROFESSIONAL**, the **PROFESSIONAL** shall be paid for the work performed or services rendered in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **PROFESSIONAL**.

**5.3.2.** In the event the services of the **PROFESSIONAL** are terminated by the **OWNER** for fault on the part of the **PROFESSIONAL**, the **PROFESSIONAL** shall be paid reasonable value of the work performed or services rendered and delivered, and the amount to be paid shall be determined by the **OWNER**.

**5.3.3.** In the event the **PROFESSIONAL** shall terminate the Agreement because of gross delays caused by the **OWNER**, the **PROFESSIONAL** shall be paid as set forth in Section 5.3.1. above.

**SECTION 6 – ADDITIONAL GENERAL CONSIDERATIONS**

**6.1. Termination**

**6.1.1. PROFESSIONAL** may only terminate this Agreement due to **OWNER'S** material breach of the terms hereof which breach causes **PROFESSIONAL** to be unable to perform its duties and responsibilities under this Agreement, and only upon ten (10) days written notice to **OWNER**, and provided **OWNER** fails to cure such default within the ten (10) day period.

**6.1.2.** The **OWNER** reserves the right to terminate the Agreement for any reason at any time upon seven (7) days written notice to the **PROFESSIONAL**.

**6.2. Ownership and Reuse of Documents.**

All documents, including Drawings and Specifications, prepared by the **PROFESSIONAL** pursuant to this Agreement shall be delivered to and become the property of the **OWNER**. The **OWNER** shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to **PROFESSIONAL**.

**6.3. Legal Responsibilities and Legal Relations.**

**6.3.1.** The **PROFESSIONAL** shall familiarize itself with and shall at all times comply with all federal, state and local laws, ordinances, and regulations which in any manner affect the services of this Agreement.

**6.3.2.** In performing the services hereunder, the **PROFESSIONAL** and its **PROFESSIONALS**, employees, agents and representatives shall not be deemed or

construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **PROFESSIONAL** shall be acting as an independent contractor. The **PROFESSIONAL** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **PROFESSIONAL** shall be solely responsible for any claims for wages or compensation by **PROFESSIONAL'S** employees, agents and representatives, including **PROFESSIONALS**, and shall save and hold **OWNER** harmless therefrom.

**6.3.3.** The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky, and that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

#### **6.4. Successors and Assigns.**

**6.4.1. PROFESSIONAL** binds itself and its partners, successors, executors, administrators, assigns and legal representatives to this Agreement in respect to all covenants, agreements and obligations of this Agreement. **PROFESSIONAL** shall not assign any interest, obligation or benefit in this Agreement. **PROFESSIONAL** shall not assign any interest, obligation or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent of **OWNER**.

**6.4.2.** The **PROFESSIONAL** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value, to be provided under this Agreement. The **PROFESSIONAL** shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the **PROFESSIONAL** of any responsibility for compliance with the provisions of this Agreement.

**6.4.3.** Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **PROFESSIONAL**.

#### **6.5. Disputes.**

Except as otherwise provided in this Agreement, any dispute concerning the amount of payment due the **PROFESSIONAL** or any dispute concerning any question of fact of any act to be performed under this Agreement, which is not disposed of by agreement between the Urban County Division of Central Purchasing and the **PROFESSIONAL**, shall be submitted to the Commissioner, Department of General Services, Lexington-Fayette Urban County Government for review. The decision of the Commissioner as to the determination of such dispute shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **PROFESSIONAL** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

## **6.6. Security Clause.**

The **PROFESSIONAL** certifies that it shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization except the **OWNER** without prior approval of the **OWNER** unless required by law.

## **6.7. Access to Records.**

The **PROFESSIONAL** and its sub-**PROFESSIONALS** shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **PROFESSIONAL** from consideration for future **PROFESSIONAL** service agreements.

## **6.8. Required Risk Management Provisions.**

The Risk Management Provisions of RFP No.6-2022 are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to **OWNER** as required therein.

## **SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this service agreement, the **PROFESSIONAL** agrees as follows:

**7.1.** The **PROFESSIONAL** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age or handicap. The **PROFESSIONAL** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The **PROFESSIONAL** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

**7.2** The **PROFESSIONAL** will, in all solicitations or advertisements for employees placed by or on behalf of the **PROFESSIONAL**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

## **SECTION 8 - SPECIAL PROVISIONS**

- 8.1.** This Agreement is subject to the following provisions.
- 8.1.2.** Pursuant to subparagraph 3.4 of this Agreement, **OWNER'S** representative is authorized to monitor, direct and review the performance of work of the **PROFESSIONAL**. Documents, data, reports and all matters associated with carrying out this Agreement shall be addressed to the **OWNER'S** representative or their designee. Questions by the **PROFESSIONAL** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the **OWNER'S** representative or their designee. The **PROFESSIONAL** shall look only to the **OWNER'S** representative or their designee for direction in its performance under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **PROFESSIONAL** within thirty (30) days.
- 8.2. NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **PROFESSIONAL**.
- 8.3. UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.
- 8.4. NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement as of the day and year first above written.

**OWNER (LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT):**

Signature: \_\_\_\_\_  
MAYOR

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CLERK OF URBAN COUNTY COUNCIL

**PROFESSIONAL (CARLA CESARIO MEDICAL CONSULTING LLC):**

Signature: \_\_\_\_\_

Carla Cesario, Owner

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF ( \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me by

\_\_\_\_\_ as \_\_\_\_\_ for

and on behalf of \_\_\_\_\_, on this the \_\_\_\_\_ day of

\_\_\_\_\_, 2022.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC