

Contract 52-2013

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made and entered into as of the 28th day of February, 2013, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky created pursuant to KRS Chapter 67A, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter "Government"), and Dr. Ryan Stanton, 1229 Birmingham Lane, Lexington, Kentucky 40513 (hereinafter "Medical Director").

WITNESSETH:

In consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are acknowledged, Government and Medical Director hereby agree as follows:

1. **TERM.** Government hereby contracts with Medical Director for the provision of Medical Director Services for the period beginning February 28, 2013, and continuing thereafter for three years, unless earlier terminated. Government may terminate this Agreement by giving Medical Director thirty (30) days prior written notice of termination. The term of this Agreement shall automatically renew for three (3) additional terms of one (1) year each unless either party gives written notice of non-renewal or termination to the other party at least sixty (60) days prior to the expiration of the original or any renewal term of this Agreement.

2. **COMPENSATION.**

Compensation shall be paid on a monthly basis by no later than the tenth (10th) day of each month, with the annual amount not to exceed the following:

First 12 months \$50,000.00

Second 12 months \$75,000.00

Third 12 months and then after yearly \$94,500.00

3. **PERFORMANCE.** Medical Director agrees to perform professional services listed in paragraph 4 herein. Medical Director shall perform all duties and services required by this Agreement faithfully and satisfactorily for the duration described herein. Medical Director shall keep himself fully informed of all national and state laws and regulations and all local ordinances, resolutions and regulations in any manner affecting the work or performance of this Agreement, and shall at all times observe and comply with such laws, ordinances or regulations, whether or not such laws, ordinances or regulations are mentioned herein.

During the term of this Agreement, Medical Director shall:

- A. Comply with all of the requirements and specifications provided for in RFP 1-2013.
- B. Fully comply with the requirements listed in the relevant Kentucky Regulations, as may be amended;

- C. Be Board Certified in Emergency Medicine;
- D. Hold a valid license to practice medicine in the Commonwealth of Kentucky;

4. **SERVICES.** Medical Director shall provide the following services:

A. Provide at least the minimum level of service and oversight required by the Kentucky Board of Emergency Medicine or any entity which oversees the provision of the types of emergency medical services provided by the Division of Fire and Emergency Services ("DFES").

B. Supervise the DFES Emergency Medical Services (EMS) Training Coordinator.

C. Provide medical oversight of the DFES Emergency Medical technician (EMT-B) and Paramedic (EMT-P) certification programs.

D. Consult with the EMS Training Coordinator, the EMS Battalion Chief and any other person designated by the Fire Chief to Control EMS in the DFES on medical issues that affect or may affect the DFES.

E. Provide medical oversight of the EMS continuing education for DFES personnel.

F. At the request of the EMS Battalion Chief, or any other person designated by the Fire Chief to control EMS in the DFES, conduct or participate in the administration of EMT-B and EMT-P training.

G. Evaluate and make recommendations regarding medical equipment, procedures and techniques for the DFES.

H. As necessary, approve and oversee training on new medical equipment, procedures and techniques for DFES EMT-B and EMT-P personnel.

I. Participate in DFES EMS quality assessment programs and provide additional or recurring training to correct deficiencies revealed by the assessment programs.

J. Review and evaluate, from a medical perspective, complaints and inquiries regarding DFES EMS personnel and services.

K. Provide medical control of disaster or multiple casualty incident scenes involving response by DFES personnel.

L. Attend and represent the DFES at meetings of the Emergency Medical Advisory Board (EMAB). Representation includes, but is not limited to, the presentation of reports, response to questions, and supplying requested information to the EMAB.

M. At the request of the DFES Fire Chief or the Commissioner of the Department of Public Safety, report to the Fire Chief or the Commissioner, or both, and provide them with such

information related to the services to be performed by the Medical Director that the Fire Chief or the Commissioner may request.

N. Serve as medical control for community events sponsored by the Government where DFES EMS personnel are utilized for EMS services.

O. Serve as physician of record for job-related infectious hazardous exposures for DFES personnel.

P. Develop, review, revise as needed and endorse all DFES EMT-B and EMT-P Protocols, Standard Operating Procedures (SOP) and Polices.

Q. Provide medical oversight as required by the Food and Drug Administration (FDA) or the Drug Enforcement Administration (DEA), as applicable, for the purchase and use of pharmaceutical drugs (including controlled substances) and medical devices and equipment by DFES personnel.

R. At the request of the DFES Fire Chief or his designee, represent the DFES at EMT-B and EMT-P Certifications, Boards, or other administrative proceedings.

S. Advise and make recommendations to the DFES, including the Fire Chief or his designee, as to medical matters involving federal, state or local laws and regulation that impact or could impact DFES EMS operations or personnel.

T. At the direction of the DFES Fire Chief or his designee, make presentations related to DFES EMS issues to the LFUCG Mayor or Council.

5. **INSURANCE.** Medical Director shall maintain for the duration of this Agreement, medical director's errors and omissions insurance against claims which may arise from or in connection with the work performed under this Agreement in the principal amount of not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) aggregate, per policy year, for any act or omission in the furnishing of medical director services. Said policy shall name the Government as "additional insured" and be placed with an insurer with either a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide, or one deemed comparable and acceptable by Government's Division of Risk Management based upon its review of the company's articles of incorporation, financial statements and insurance policy contract language. Government will provide an amount not to exceed \$20,000.00 per year to pay for such insurance, and in no event shall such amount exceed the actual cost to of such an insurance policy(s).

6. **INDEMNITY.** Medical Director agrees to indemnify, hold harmless, and defend the Government, its elected and appointed officials, employees, agents, and successors in interest, from any and all losses or claims of whatever kind that arise from or are alleged to have arisen, directly or indirectly, in whole or in part from the breach of this Agreement. This indemnity shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

7. **REPORTING.** The Medical Director agrees to report to the Government's DFES Chief upon request and to provide any information requested by said Chief as it relates to the duties specified herein.

8. **OVERSIGHT.** Government designates its Chief of the DFES, and such other person or persons as he may deem necessary, to monitor and evaluate the services rendered by Medical Director. Government, its agents and employees, shall, at all times, have unrestricted access to all places where or in which the services required by this Agreement are being carried on and conducted by the Medical Director. Inspection and monitoring of the services by those authorities shall in no manner be presumed to relieve Medical Director of his responsibility or obligations.

9. **DEFAULT.** In the event Medical Director fails to perform or satisfy each and every material term or condition of this Agreement, then such failure shall be deemed a default and Government shall be entitled to terminate this Agreement upon thirty (30) days prior written notice to Medical Director. Upon declaration of default, Government shall be entitled to seek relief by way of any and all available remedies.

10. **HIPAA COMPLIANCE.** By virtue of the services performed under this Agreement, Medical Director is a "Business Associate" of Government, as that term is defined in the Privacy Rule (45 CFR §160.103) of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191)("HIPAA"), as amended. The Government, as a "Covered Entity", is required by the Privacy Rule and the Security Rule issued pursuant to HIPAA to obtain satisfactory assurance that Medical Director will appropriately safeguard the Protected Health Information received from, or created or received on behalf of, Government. Therefore, the parties agree to the following additional terms and conditions and will execute any other agreement(s) required in order to adequately comply with HIPAA:

A. **Definitions:** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule and the Security rule.

(1) "Business Associate": Shall mean the Medical Director.

(2) "Covered Entity": Shall mean the Government.

(3) "Individual": Shall have the same meaning as the term "individual" in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(4) "Privacy Rule": Shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts § 160 and Part 164, Subparts A and E.

(5) "Protected Health Information": Shall have the same meaning as the term "protected health information" in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(5) "Security Rule": Shall have mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts § 160 and 164, Subparts A and C.

(6) "Secretary": Shall mean the Secretary of the Department of Health and Human Services or his designee.

B. Obligations and Activities of Business Associate. Business Associate agrees to: (1) not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law, or as otherwise authorized by Covered Entity; (2) use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement; (3) 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 this Agreement; (4) report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement, or Security Incident related to Protected Health Information of which he becomes aware; (5) ensure that any agent to whom he 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 to Business Associate through this Agreement with respect to such information; (6) provide access, at the request of Covered Entity, and in the time and manner set forth in paragraph F herein below, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524; (7) make any amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner set forth in paragraph G herein below; (8) make 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 to the Secretary, in a time and manner set forth in paragraph F herein below, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule; (9) to document such 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 §164.528; and, (10) provide to Covered Entity or an Individual, in time and manner set forth in paragraph F herein below, information collected in accordance with paragraph B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

C. Permitted Uses and Disclosures by Business Associate: Except as otherwise limited in this Agreement, Business Associate may (1) use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity; (2) may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; (3) may disclose Protected Health Information for the proper management and administration of the Business

Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; (4) may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR §164.504(e)(2)(i)(B); and, (5) may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with CFR §164.502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall notify Business Associate of: (1) any limitations in its Notice of Privacy Practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information; (2) any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information; and, (3) any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

E. 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 the Privacy Rule if done by Covered Entity.

F. Access and Production. If Business Associate is required by the Privacy Rule or by the terms of paragraph B hereinabove to provide Covered Entity or its designee with access to or copies of Protected Health Information, then Business Associate shall provide such access or produce such copies within a period of twenty (20) days of receipt of written notice from Covered Entity requesting access or copying. Business Associate shall provide access or deliver copies of the requested information to Covered Entity at 219 East Third Street, Lexington, Kentucky or at such other location as may be agreed to by the parties.

G. Amendment of Protected Health Information by Business Associate. Within a period of thirty (30) of receipt of written notice from Covered Entity that it has accepted and agreed to a request for an amendment of Protected Health Information, Business Associate shall amend any such Protected Health Information that he maintains in accordance with 45 CFR §164.526(c)(1),(4) and (5).

H. Term of HIPAA Provisions. The term of the HIPAA provisions to the Agreement shall be effective as of February 28, 2013, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Agreement.

I. Termination for Cause. Upon Covered Entity's obtaining knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall either: (1) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this

Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or (2) immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or (3) if neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

J. Effect of Termination. Except as provided in this paragraph, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon giving written notice that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

K. Miscellaneous Provisions:

(1) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as is now in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate under paragraph J of this Agreement shall survive the termination of this Agreement.

(4) Interpretation. Any ambiguity in this Agreement or the Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

11. **MISCELLANEOUS.**

A. Governing Law. This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in Fayette County, Kentucky.

B. Changes and Additions. By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. Medical Director acknowledges that Government may make such changes only with the approval of its legislative authority, the Lexington-Fayette Urban County Council, and signed by its Mayor.

C. Entire Agreement. This shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose.

D. Anti-Discrimination. Each party shall provide equal opportunity and employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age or disability, shall promote equal employment and shall cause each of its respective contracting agencies to do so. This program of anti-discrimination shall apply to every aspect of the parties' employment policies and practices.

E. Assignability. Neither party may assign any of its rights and duties under this Agreement without the prior written consent of the other party.

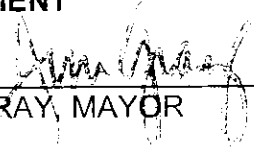
F. Notices. All notices, requests, demands, waivers, and other communications given or required to be given under this Agreement shall be in writing and shall be addressed to the parties at the respective addresses in the heading to this Agreement. All such communications to Government shall be directed to the attention of Commissioner of the Department of Public Safety or to such person as he may designate in writing.

G. Waiver. The waiver by either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision of this Agreement.

H. Authorization. By their signatures below, Government and Medical Director hereby verify that they have been duly authorized to execute, deliver and perform this Agreement and the execution and performance of the Agreement are within the powers of the Government and the Medical Director and do not contravene any law, rule or regulation.

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky, the day and year first above written.


**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

BY: 
JIM GRAY, MAYOR

ATTEST:


URBAN COUNTY COUNCIL CLERK

MEDICAL DIRECTOR

BY: 
RYAN STANTON, M.D.

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Professional Services Agreement was signed, sworn to and acknowledged before me, by Ryan Stanton, M.D., on this the 14 day of February, 2013.

My commission expires: 12/12/2014

Wm R. Fogle
NOTARY PUBLIC, STATE OF KY AT LARGE