

## **AGREEMENT**

**THIS PROFESSIONAL SERVICE CONTRACT**, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **DEPARTMENT OF PUBLIC HEALTH AND WELLNESS** and the **LOUISVILLE METRO BOARD OF HEALTH** herein referred to as “**METRO GOVERNMENT**”, and the **UNIVERSITY OF LOUISVILLE (“UNIVERSITY”)** by and through its **SCHOOL OF PUBLIC HEALTH AND INFORMATION SCIENCES (“ULPH”)**, 485 East Gray Street, Louisville, KY 40202.

### **WITNESSETH:**

**WHEREAS**, the Metro Government desires to employ a Director of Health (“Director”) for LMPHW and the Board of Health; and

**WHEREAS**, the statutory and job requirements of the position mandate that Director be qualified as a public health administrator and be licensed to practice medicine or eligible to be licensed to practice medicine in the State of Kentucky; and

**WHEREAS**, ULPH has determined that it needs a faculty member with experience in public health administration who is qualified to work with the Metro Government and the Board of Health as Director; and

**WHEREAS**, the Metro Government, LMPHW, the Board of Health and ULPH have conducted a nationwide search for an individual who will meet the needs of all the parties and serve as Director; and

**WHEREAS**, the parties desire to enter into a joint working arrangement for the services of Director; and

**WHEREAS**, pursuant to K.R.S. 45A.380 the Metro Government has determined that competition is not feasible and that this Agreement is for the services of a professional; and

**WHEREAS**, University possesses the requisite experience and qualifications to provide the unique nature of the services desired by the Metro Government;

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

**I. SCOPE OF PROFESSIONAL SERVICES**

**A. University agrees as follows:**

1. University agrees that upon approval of the University Trustees, Director shall have full-time faculty status in the ULPH, and may have secondary appointments in other schools of the University;
2. University agrees that the primary responsibilities of Director shall be to LMPHW and the primary office of Director shall be at LMPHW;
3. University agrees that Director's duties to University must be consistent with LMPHW's mission and obligations and must not conflict with Director's duties to LMPHW;
4. Director's responsibilities and duties, as Director of LMPHW, shall include, but not be limited to, the following:
  - a. Director shall be responsible for all programs and operations of the BOH and LMPHW;
  - b. Director shall report to the Louisville Metro Mayor or his designee on all matters concerning the BOH and LMPHW;
  - c. Director shall be responsible to the BOH through its Chairman as to LMPHW programs, projects and operations related to the BOH's statutory duties and obligations;
  - d. Director shall perform such duties as set out in the Metro Government job description, attached hereto and made a part hereof as though fully set out herein, marked Exhibit 1;
  - e. Director shall perform such duties as prescribed in KRS Chapter 212 and all other applicable regulations and laws, whether local, state or federal, and as set out in all contracts or obligations undertaken by LMPHW;
  - f. Director shall perform related duties and assignments as directed by the Metro Government and by the Board of Health in accordance with its statutory duties;
  - g. Director shall maintain the policies and protocols requiring physician direction as listed on Exhibit 2, attached hereto and made a part hereof as though fully set forth herein;
  - h. Director shall review and sign protocols as listed in Exhibit 3 attached hereto and made a part hereof as though fully set forth herein;
  - i. Director shall review and sign standing orders as listed in Exhibit 4 attached hereto and made a part hereof as though fully set forth herein; and
  - j. Director shall act as the representative of the Board of Health and the Metro Government on the various boards, committees, task forces, etc as listed in Exhibit 5 attached hereto and made a part hereof as though fully set forth herein.
5. Director, as a faculty member of University, shall have the following responsibilities and duties:
  - a. ULPH Chair and Dean shall determine the duties of Director to University; and

- b. Director shall accept teaching and research assignments that include supervision of ULPH students assigned to LMPHW, which are consistent with LMPHW's mission and obligations.

**B. ACCOUNTABILITY OF THE DIRECTOR**

1. Director shall be a ULPH employee assigned to the Metro Government and the Board of Health and accountable to the Metro Government and the Board of Health with regard to his/her statutory duties and obligations; and
2. With regard to Director's responsibilities to ULPH, Director will be accountable to the appropriate Dean.

**II. FEES AND COMPENSATION**

**A.** The Metro Government shall contribute to ULPH one-half of Director's compensation, and shall provide payment to ULPH on a monthly basis after receipt of a detailed invoice from University. The Metro Government shall provide compensation to ULPH for the compensation of the Director in the amount of **ONE HUNDRED TWENTY-TWO THOUSAND ONE HUNDRED SEVENTY SIX DOLLARS AND NINETY CENTS (\$122,176.90)**.

ULPH shall generate a University paycheck to Director. ULPH further agrees that Director shall receive all usual and ordinary faculty benefits including fringe benefits through University.

In the event that the Metro Government terminates this Agreement, the Metro Government shall not be responsible for any further contribution to ULPH for the ULPH employee and the employee shall no longer hold the Director position. ULPH shall then solely determine the employee's wage and duties.

In the event that ULPH terminates Director, ULPH shall not be responsible for any further compensation of the employee; provided, however, the Metro Government shall then have the opportunity to hire the terminated ULPH employee. The Metro Government shall then solely determine the employee's wage and duties.

In the event that ULPH were to increase their portion of the Director's salary, that will in no way increase the obligation of Metro Government.

The Metro Government shall provide Director **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)** for Continuing Medical Education expenses.

Total compensation payable under this Agreement shall not exceed **ONE HUNDRED TWENTY-THREE THOUSAND SIX HUNDRED SEVENTY SIX DOLLARS AND NINETY CENTS (\$123,676.90)**.

**B.** The Metro Government shall reimburse out-of-pocket expenses if they are reasonable in amount and necessary to accomplish the scope of services of this

Agreement. The Metro Government will not reimburse first class air fare, personal phone calls, short term parking expenses, or other premium type expenses. The Metro Government reserves the right to reduce or disallow expenses considered excessive or unnecessary under this contract.

C. University agrees that all outstanding invoices at the end of the fiscal year (June 30) must reach the Metro Government no later than July 15 of the following fiscal year. University agrees that original invoices that are not in Metro Government possession by this time will not be paid and University agrees to waive its right to payment for services billed under such invoices.

### III. DURATION

A. This Agreement shall begin July 1, 2014 and shall continue through and including June 30, 2015.

B. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of the 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 at the rates identified in this Agreement. In the event that, during the term of this Agreement, 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 University 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 University 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**

University shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of University's costs which are chargeable to the Metro Government under this Agreement.

**VI. DEFENSE AND INDEMNITY**

If a claim for money damages is brought against the Director, the Metro Government agrees to defend and indemnify her as if she were a Metro employee covered by KRS 65.200-.2006 and Louisville Metro Codified Ordinances Sections 35.180-35.183.

**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. University agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. University further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

**VIII. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State 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 University, by execution of this Agreement, does hereby certify and represent that it is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

**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. SUCCESSORS**

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

**XIII. 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.

**XIV. 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, University 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. MISCELLANEOUS** University agrees that, in the event it receives from the Metro Government any protected health information, it will not disclose any of that information to any third party unless the disclosure complies with the rules and regulations of the Health Insurance Portability and Accountability Act ("HIPAA"), codified in 42 U.S.C. § 1320d and 45 C.F.R. 160-164. University shall hold in strictest confidence all documentation, information, and observations gathered in the performance of this Agreement, and University agrees to negotiate and execute a mutually acceptable Health Department Business Associate Agreement, if applicable for the project. University further agrees to require any of its subcontractors to both abide by the aforementioned HIPAA prohibitions against the unauthorized disclosure of confidential and protected health information and to sign an approved Metro

Government's Business Associate Agreement that contains substantially the same terms as the Metro Government's Business Associate Agreement .

The Metro Government and University agree to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et. seq.*) and all implementing regulations and executive orders, and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701) and the Kentucky Equal Employment Act of 1978 (K.R.S. § 45.550 to 45.640) and the Americans with Disabilities Act (42 U.S.C. § 12101 *et. seq.*). No person shall be excluded from participation in, be denied the benefits of, or be subject to discrimination in relation to activities carried out under this Agreement on the basis of race, color, age, religion, sex, disability or national origin. This includes provision of language assistance services to individuals of limited English proficiency seeking and/or eligible for services under this Agreement.

University nor any of its employees or personnel shall speak on behalf of or as a representative of the Metro Government or the Department of Public Health and Wellness without the express authorization of the Director of that Department or his designee.

The University shall reveal any final determination of a violation by the University or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the University or subcontractor. The University shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the University or subcontractor for the duration of the contract.

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

**APPROVED AS TO FORM AND  
LEGALITY:**

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

\_\_\_\_\_  
**MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY**

\_\_\_\_\_  
**DR. LAQUANDRA NESBITT, M.D.,  
DIRECTOR, DEPARTMENT FOR PUBLIC  
HEALTH AND WELLNESS**


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

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


**UNIVERSITY OF LOUISVILLE**

  
\_\_\_\_\_  
**DR. DAVID L. DUNN  
EXECUTIVE VICE PRESIDENT FOR  
HEALTH AFFAIRS**

Date: 7/7/14

*APPROVED AS TO FORM  
AND LEGALITY*  
  
*DATE 7/14/14*

Recommended by:

  
\_\_\_\_\_  
**DR. CRAIG H. BLAKELY  
DEAN, SCHOOL OF PUBLIC  
HEALTH AND INFORMATION SCIENCE**

Date: 7/2/14

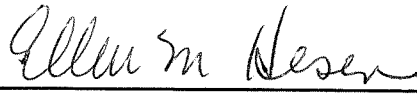
Health Department - PSC with The University of Louisville School of Public Health and Information Services  
for Payment of the Salary of the Director of Health Fiscal Year 2014-2015 070114 - [pr]

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

APPROVED AS TO FORM AND  
LEGALITY:

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

\_\_\_\_\_  
MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

  
\_\_\_\_\_  
ELLEN M HESEN  
CHIEF OF STAFF  
OFFICE OF THE MAYOR

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

Date: 7/23/14

UNIVERSITY OF LOUISVILLE

\_\_\_\_\_  
DR. DAVID L. DUNN  
EXECUTIVE VICE PRESIDENT FOR  
HEALTH AFFAIRS

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

Recommended by:

\_\_\_\_\_  
DR. RICHARD CLOVER  
DEAN, SCHOOL OF PUBLIC  
HEALTH AND INFORMATION SCIENCE

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

Health Department - PSC with The University of Louisville School of Public Health and Information Services  
for Payment of the Salary of the Director of Health Fiscal Year 2014-2015 070114 - [pr]