

WRITTEN FINDINGS

EXPLAINING NECESSITY FOR USING NONCOMPETITIVE NEGOTIATION FOR PSC

This document constitutes written request and findings, as required by KRS 45A.380 stating the need to purchase through noncompetitive negotiation. By the signatures listed below, the Requesting Department has determined, and the Chief Financial Officer concurs, that competition is not feasible because:

_____ A. An emergency exists which will cause public harm as a result of the delay in competitive procedures. **** Mayors Approval required for emergency purchases exceeding \$10,000.**

X _____ B. There is a single source within a reasonable geographic area of the supply or service to be procured or leased (attach sole source determination from the Purchasing Department).

X _____ C. The contract is for the services typically provided by a licensed professional, such as an attorney, architect, engineer, physician, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; an artist such as a sculptor, aesthetic painter, or musician; or a non-licensed professional such as a consultant, public relations consultant, advertising consultant, developer, employment department, construction manager, investment advisor, or marketing expert and the like.

_____ D. The contract is for the purchase of perishable items purchased on a weekly basis, such as fresh fruits, vegetables, fish, or meat.

_____ E. The contract is for replacement parts where the need cannot reasonably be anticipated and stockpiling is not feasible.

_____ F. The contract is for proprietary items for resale.

_____ G. The contract or purchase is for expenditures made on authorized trips outside the boundaries of the city.


_____ H. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids.

_____ I. The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, or unemployment liability insurance.

_____ J. The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the Metro Government.

_____ K. The contract was solicited by competitive sealed bidding and no bids were received from a responsive and responsible bidder.

_____ L. Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder.

 3/3/16
Requesting Department Director Date

**Mayor Date
**Signature is required only for Written Finding A

 3/3/16
OMB/Purchasing Approval Date

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**, herein referred to as **"METRO GOVERNMENT"**, and **THE UNIVERSITY OF LOUISVILLE ("University")** by and through **The Department of Family and Geriatric Medicine (DFGM)** , 501 E. Broadway, Suite 240, Louisville, KY 40202.

WITNESSETH:

WHEREAS, the Metro Government desires to employ an acting Medical Director to assist in oversight and services for its clinical services program, during the search for a permanent Director of Health; and

WHEREAS, the job requirements of the position mandate that the Medical Director be licensed to practice medicine or eligible to be licensed to practice medicine in the State of Kentucky and be experienced in public health issues.

WHEREAS, DFGM has determined that it needs a faculty member with experience in public health who is qualified to work with the Metro Government Department of Health and Wellness.

WHEREAS, the parties desire to enter into a joint working arrangement for the services of Acting Medical 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 Medical Director

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. DFGM shall, at the request of the Metro Government, provide services under the terms of this professional Agreement. The DFGM'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. If from time to time DFGM needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then DFGM 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 understanding of both parties.

C. The services of DFGM shall include but not be limited to the following:

1. DFGM shall provide a physician approved by the LMPHW Interim Director, to provide services and oversight of the LMPHW clinical services programs. The physician shall be licensed to practice medicine in the Commonwealth of Kentucky. Physician services shall be provided under the direction of the LMPHW Interim Director, or her designee, at sites designated by LMPHW. LMPHW has provided a general position description outlining the broad responsibilities of the Acting Medical Director which is attached hereto and fully incorporated herein as Attachment A.
2. DFGM's Physician will provide services according to acceptable professional standards of care and applicable LMPHW medical treatment protocols.
3. DFGM shall be responsible for providing physician coverage for services within the scope of this agreement for no less than 24 hours per week and accepting emergency calls after hours with regard to public health issues. Telephone back up coverage will be provided by a DFGM physician when the designated DFGM Physician is out of the office for vacation, holidays, or other breaks.
4. DFGM Physician shall provide medical direction for all LMPHW clinical activities including STD and TB Services.

D. The Metro Government shall:

1. Provide appropriate nursing and administrative support services for DFGM physicians;
2. Allow designated DFGM physician to see patients at the University for four sessions per week.
3. Retain complete ownership of all data, whether print or electronic, including but not limited to patient records, disease surveillance, and provider utilization information, gathered by DFGM while providing

services under this Agreement. LMPHW agrees that DFGM may analyze the data for purposes of research and/or publication.

II. **FEEES AND COMPENSATION**

A. The Metro Government shall pay DFGM for appropriately documented services rendered during this Agreement. The Metro Government shall pay DFGM monthly at the rate **eight thousand (\$8,000.00)** per month, unless a full month is not worked. Payment for work less than a full month shall be prorated. The total compensation paid pursuant to this Agreement shall not exceed **FORTY THOUSAND DOLLARS (\$40,000.00)**. Any and all reimbursements, payments, collections, and fees associated with physician services provided at LMPHW by the designated physician under this Agreement shall remain the property of LMPHW.

B. Unless otherwise agreed to in writing by the Metro Government, services shall be rendered and payment therefore shall be made at monthly intervals throughout the duration of this Agreement. Payment shall only be made pursuant to a detailed invoice presented monthly, which with the invoice shall include: a descriptive accounting of the time and effort expended in service (e.g. percentage of effort that month, hours expended) under the contract for the monthly period covered on the invoice, the particular nature of such service and any out-of-pocket expenses. Copies of invoices or receipts for out-of-pocket expenses and other third party charges must be included with the DFGM's invoice when payment is requested. In the event payment is made in lump sum at the end of the service period, DFGM's final invoice shall indicate a descriptive accounting of the time and effort expended as described heretofore.

C. DFGM shall only be reimbursed out-of-pocket expenses if they are reasonable in amount and necessary to accomplish the scope of services of this

contract. 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.

D. DFGM, 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, DFGM agrees to pro-rate its billings and out of pocket expenses to Metro Government appropriately and to provide documentation to all parties to verify the pro-ration of such billings and expenses. 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 or expense).

E. DFGM agrees to make all reasonable efforts to submit all invoices to the Metro Government promptly.

III. DURATION

A. This Agreement shall begin February 1, 2016 and shall continue through and including June 30, 2016

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.

IV. EMPLOYER/EMPLOYEE RELATIONSHIP

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause DFGM 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. Notwithstanding any language in this Agreement to the contrary, any physician designated by DFGM to perform services under this Agreement shall be covered in performing such services by the Amended Trust Agreement of 2012 ("Trust") by and between the Louisville/Jefferson County Metro Board of Health and JP Morgan Chase Bank, NA, as provided for in that Trust's Section 4, Subsection D, a copy of which Trust is attached hereto and fully incorporated herein as Attachment B.

V. RECORDS-AUDIT

DFGM 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 DFGM'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 DFGM shall include (without limitation): (a) payroll records accounting for total time distribution of DFGM'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 if made in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for

DFGM'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

DFGM, as an agent of the University of Louisville (U of L), although vested with sovereign immunity, is subject to the Board of Claims Act, KRS 44.070-44.160. Claims against DFGM relating to personal injury or property damage may be filed and decided under the provisions of the Act. To the extent permitted by that Act and other applicable law, DFGM as agent for the University of Louisville, shall defend, indemnify and hold harmless the Metro Government from and against any and all claims against the Metro Government which may result from any error or omission arising out of DFGM's performance under this Agreement.

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 DFGMs. DFGM agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. DFGM 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 DFGM'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 DFGM, 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, DFGM 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

DFGM 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, DFGM 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

The Metro Government and DFGM 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.

DFGM 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 DFGM shall reveal any final determination of a violation by the DFGM 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 DFGM or Subcontractor. The DFGM shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the DFGM or Subcontractor for the duration of the contract.

DFGM 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. DFGM shall hold in strictest confidence all documentation, information, and observations gathered in the performance of this Agreement, and DFGM agrees to negotiate and execute a mutually acceptable Business Associate Agreement if applicable for the project. DFGM 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 Business Associate Agreement that contains substantially the same terms as the Metro Government's Business Associate Agreement.

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

Sarah S. Moyer

DR. Sarah Moyer, M.D. MPH
INTERIM DIRECTOR, DEPARTMENT FOR
PUBLIC HEALTH AND WELLNESS

Date: _____

Date: 3-4-16

University of Louisville, Department of
Family and Geriatric Medicine


Diane M. Harper

Diane M. Harper, M.D., MPH, MS
Chair

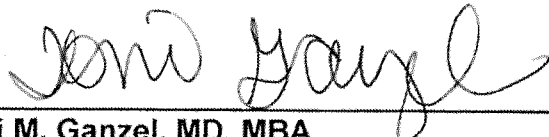
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Taxpayer Identification No.
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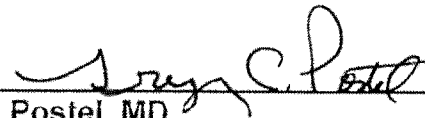
Louisville/Jefferson County
Revenue Commission Account
No.: _____

By: 
Katherine Pohlgeers, MD,
Department of Public Health and Wellness
Acting Medical Director

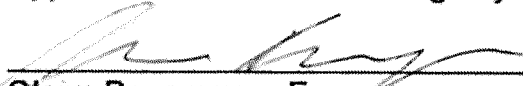
Date: 3-4-16

By: 
Toni M. Ganzel, MD, MBA
Dean of the School of Medicine

Date: 3-14-16

By: 
Greg Postel, MD
Interim Executive Vice President for Health Affairs

Approved as to Form and Legality:


Glenn Bossmeyer, Esq.
Associate University Counsel

Date: 3/7/16

ATTACHMENT A. MEDICAL DIRECTOR JOB DESCRIPTION

Description Medical Director

Essential Functions Directs and oversees planning, development and implementation of clinical activities for the Department of Public Health and Wellness
Exercises supervision over subordinate personnel

Examples Of Work UNDER GENERAL DIRECTION

Directs clinical operations, activities and personnel
Establishes and implements clinical goals, objectives, policies and procedures through subordinate managers to achieve the success of programs and operations
Participates in the examination, diagnosis and treatment of patients
Reviews medical and laboratory data of patients and consults with staff to ensure accurate diagnosis, adequate treatment has been prescribed, proper case management and appropriate epidemiologic follow-up
Plans, initiates, directs, coordinates and evaluates medical management activities required to fulfill the departmental clinical practice objectives
Evaluates the effectiveness of clinical and medical operations in terms of mission accomplishment, quality and quantity standards, procedural, policy, and regulatory compliance and technical competence
Develops and implements examination, diagnostic and treatment protocols and procedures in compliance with CDC guidelines and agency policies and practices
Facilitates patient care and medical management conferences using case studies and facilitates meetings with other clinical personnel to update them on medical policies, procedures and objectives
Develops performance standards and evaluates subordinate performance
Provides technical advice, counsel and instruction
Advises department management regarding communicable disease control functions and provides support to medical service programs and projects
Attends seminars, meetings, conferences, and formal and informal training to keep abreast of current medical trends
Serves as medical consultant to area hospitals and other community healthcare agencies providing communicable and infectious disease related services
Participates in emergency response planning
Serves as a member of national, state and local medical related committees, work groups, and task forces
Selects, trains, disciplines and evaluates employees; recommends personnel actions; and resolves employment complaints and grievances
Presents comprehensive and evaluative reports on department operations and activities
Represents the department to the Board of Health, medical community, educational institutions, governmental agencies, organizations, departments and the public concerning public health programs, operations and activities in Director's absence

Desired Skills and Abilities Knowledge of causative agent, transmission, and natural history of infectious diseases including TB, HIV, sexually transmitted infections, influenza, food borne illness, and zoonotic infections
Knowledge of methods for diagnosis, treatment, contact investigation, and prevention of infectious diseases
Ability to relay knowledge to program staff, patients, and the general public using language and teaching materials appropriate to each group

Attachment B

Amended Trust Agreement of 2012 by and between the Louisville/Jefferson County Metro Board
of Health and JP Morgan Chase Bank, NA

AMENDED TRUST AGREEMENT OF 2012

This Amended Trust Agreement of 2012 ("Agreement") is entered into and made effective on this 22nd day of March, 2012 (the "Effective Date") by and between the Louisville/Jefferson County Metro Board of Health ("Board of Health") and JP Morgan Chase Bank, NA ("Trustee").

WITNESSETH:

WHEREAS, the Board of Health and Liberty National Bank & Trust Company entered into the original "Trust Agreement" dated September 28, 1977 (the "Self-Insurance Trust") in order for contributions to the Self-Insurance Trust fund to be recognized as allowable costs of operation for Medicare reimbursement purposes; and

WHEREAS, pursuant to said Trust Agreement, the Board of Health transferred, conveyed and assigned to Liberty National Bank & Trust Company, in trust, the assets and properties of the Self-Insurance Trust for all the uses and purposes stated in the Trust Agreement; and

WHEREAS, the Board of Health has previously conveyed Louisville General Hospital to the University of Louisville and, therefore, was no longer responsible for claims involving incidents occurring after 1979; and

WHEREAS, to reflect those changes and other reasons, the original trust Agreement was replaced by a "First Amended Trust Agreement" on September 26, 1979; and

WHEREAS, after consolidation of Louisville and Jefferson County governments in January 2003, the Board of Health and BANK ONE TRUST COMPANY, N.A., a successor company to Liberty National Bank & Trust Company, entered into second "AMENDED TRUST AGREEMENT OF 2005, effective April 29, 2005, to clarify the terms of coverage under the "First Amended Trust Agreement" of 1979; and

WHEREAS, KRS 65.2005 and Louisville Metro Codified Ordinances Sections 35.180-183 provide that with some exceptions described therein, Louisville Metro must provide for a defense and indemnity when Louisville Metro employees and officers are sued as a result of performance of their official duties; and members of the Board of Health and employees of the Louisville Metro Department of Public Health and Wellness fall within the protection of the statute and ordinances referred to above; and

WHEREAS, qualifying Family Health Centers, Inc. employees are generally protected for claims of medical malpractice by the Federal Tort Claims Act (42 USC Section 233(g)); but the employees of Family Health Centers, Inc. are not employees of Louisville Metro and are therefore not entitled to a defense and indemnity under the state statute and Louisville Metro Ordinance for non-medical claims; and

WHEREAS, there is a need for the self-insurance trust to remain in existence to cover claims falling outside the protection afforded the Federal Tort Claims Act; and

WHEREAS, to reflect these changing circumstances, it is necessary to amend the "AMENDED TRUST AGREEMENT of 2005" as follows:

NOW, THEREFORE, THE AMENDED TRUST AGREEMENT OF 2005 IS AMENDED AS FOLLOWS AND SHALL BE REFERRED TO AS THE "AMENDED TRUST AGREEMENT OF 2012":

1. Ownership of Trust Assets. The Trustee shall have the muniments of title and sole custody of all the assets comprising this trust estate and any and all income earned thereon shall become a part of such trust estate. The Trustee is hereby vested with full and complete title to all said trust estate, both as to principal and income, subject only to the terms of this Agreement. Except as herein expressly provided, no part of this trust estate shall be liable for the debts of the Board of Health, its divisions and/or subsidiaries, nor shall the same be subject to seizure by any creditor of the Board of Health, its divisions and/or subsidiaries, under any writ or proceeding at law or in equity.

2. Restrictions on Trustee. The Trustee shall make no loans from the trust estate to the Board of Health. The Board of Health shall have no power to sell, assign, transfer, encumber, or in any other manner dispose of its interests in this trust estate except as is herein specifically provided.

3. Soundness of the Fund. In order to maintain this trust estate in an amount sufficient to satisfy the purposes of this trust as described in paragraph 4 below, the Board of Health shall periodically engage the services of an independent actuary to analyze the trust estate using actuarial methods customarily employed by the insurance industry to determine the soundness of the self insurance reserve funds. To maintain the soundness of the fund for its primary purpose, the fund will be maintained between an 85-95% confidence level of protection.

A copy of the report of the independent actuary shall be submitted to the Trustee and the Board of Health.

4. Purpose of Trust.

(A) The primary purpose of this trust shall be: (i) to provide for the defense against any Covered Claim (as hereinafter defined) made against the Board of Health or others herein specified and (ii) to provide for the payment of any settlement or final judgment entered against the Board of Health or others herein specified for any such Covered claim in an amount not to exceed \$1,000,000 for any one occurrence and \$1,000,000 in the aggregate during any fiscal year for the Board of Health, the Louisville Metro Department of Public Health and Wellness ("Department"), or the Family Health Centers, Inc., as the Board of Health may decide.

(B) A "Covered Claim", as said term is used in this Agreement, shall be any claim, not otherwise covered by the Federal Tort Claims Act, (i) for medical malpractice or (ii) for general liability, against the Louisville Metro Board of Health or any of its divisions or subsidiaries; and the Louisville Metro Department of Public Health and Wellness ("Department"), and the persons described in paragraph (4)(D)(E), and (F) below. This includes specifically, Family Health Centers, Inc., and its directors, officers and employees.

(C) "General Liability" shall mean any claim for negligence, including claims for damage to property or persons, any claim for false arrest, slander, false imprisonment, malicious prosecution, libel, and invasion of privacy. Such term, however, shall not include, and there is specifically excepted from this coverage, any claim arising out of use of an automobile, or resulting from war, insurrection, acts of terrorism, rebellion, or the like, or which results from an employee's or agent's willful violation of law or with the consent of the injured party.

(D) While engaged upon the business of the Board of Health, the Department, or Family Health Centers, Inc, the coverage described in subsection 4(B) above shall extend to all members of the Board of Health; its subsidiary boards and committees; and all agents, employees and personnel of the Board of Health, the Department, and Family Health Centers, Inc.; including any physician serving in the capacity of the Department's Medical Director or Interim Medical Director, or substituting during his/her absence.

(E) The coverage described in subsection 4(B) may be extended to an entity or person performing work for the Board of Health or the Department upon approval of the Board of Health.

(F) Anything contained in this Agreement to the contrary notwithstanding, the coverage herein provided shall specifically extend to the Director of the Department ("Director") for actions performed in furtherance of the business of the Department or the Board of Health.

5. Other Permitted Expenditures. In addition to the payments for the purposes specified in Paragraph 4 above, the Trustee may make disbursements from the trust estate only for the following purposes: (a) for payment of the Trustee's fees and expenses as authorized by this Agreement, (b) for payment of fees and expenses pertaining to any claim management and/or risk management programs adopted or approved by the Board of Health, (c) for payment of fees and expenses for the actuarial services referred to in Paragraph 3 hereof, and (d) for payment of fees and expenses for legal services incurred in defending claims made of the type referred to in Paragraph 4 hereof.

6. Reservation of Certain Authority. The Board of Health shall have and it hereby reserves, all final authority with respect to the settlement or payment of any claim or judgments as referred to in Paragraph 4 of this Agreement, or with respect to the employment of these agents referred to in Paragraph 5.

7. Procedures for Payment.

(A) For those payments from trust assets specified in Paragraphs 4 and 5(d) hereof, the Trustee shall require a resolution adopted by the Board of Health in formal session, along with written authorization from the Secretary of the Board of Health, or in his or her absence, from the Chairman or Vice Chairman thereof, stipulating the party or parties to whom the payment is to be made, the amount of the payment, and the specified reason for the payment. The Board resolution itself shall be provided to the Trustee in the written form of an excerpt of the Board minutes, certified by the Chairman, Vice Chairman, or Secretary of the Board of Health.

(B) For those payments from trust assets specified in Paragraphs 5(a), 5(b) and 5(c) hereof, the Trustee shall require written authorization from the Secretary of the Board of Health, or in his or her absence, from the Chairman or Vice Chairman thereof, along with an executed copy of the contract or agreement under which said payment is being made. However, in the event that the requested payment should exceed the contract amount, or not otherwise be covered by a written agreement, then the Trustee shall require a Board resolution in the same form and with the same approval as set forth hereinabove for payments permitted under Paragraphs 4 and 5(d) of this Agreement.

8. Investment of Trust Assets. The Trustee shall use its best efforts to preserve the trust estate through the proper investment thereof. The Trustee shall not sell, purchase, exchange, or otherwise deal with or dispose of trust assets for less than full and adequate consideration.

9. Trustee Power Over Assets. In the administration of this trust estate, the Trustee shall have all those powers incidental to ownership normally allowed a trustee, and such powers shall be exercised without necessity of any prior or subsequent approval of any court or judicial authority, and no person dealing with the Trustee shall be required to inquire into the propriety of any of its actions. Without in any way limiting the generality of the foregoing, the Board of Health further grants to the Trustee the following additional specific powers: (a) to sell or exercise any "right" issued on any securities held in the trust estate, (b) to vote in person or by proxy any stocks or securities and to grant such proxies and powers of attorney to others, (c) to consent to and participate in any plan for the liquidation, reorganization, consolidation, or merger of any corporation whose stock or other security is held in trust herein, and (d) to register or carry trust property in its name or in the name of its nominee or to hold it unregistered.

10. Annual Certified Statement. The Trustee shall submit a certified financial statement to the Board of Health no later than sixty (60) days after the end of each fiscal year of the trust estate. Said statement shall provide at least the following information: (a) the balance in the trust estate at the beginning of the fiscal year, (b) the amount and nature of all current year payments or withdrawals from the trust estate, including a separate accounting for claims paid, for claims and risks management expenses, for legal expenses, for actuarial expenses, and for Trustee's fees and expenses, and (c) the balance in the trust estate at the end of the fiscal year.

11. Discontinuance of Coverage. In the event the Board of Health discontinues services requiring the coverage herein provided, or in the event that it purchases insurance required to take the place hereof and wishes to discontinue its self insurance coverage for subsequent medical malpractice and/or general liability claims, then the following steps shall be taken. An independent actuary shall analyze the balance in the trust estate and shall determine the adequacy of the funds to support disbursements to cover payment of future claims and expenses arising from instances occurring while payments into the trust estate were being made. The Trustee shall maintain in the trust an appropriate reserve to pay such claims and expenses, but if the actuary determines that there are excess funds in the trust estate, the excess balance shall be refunded to the Board of Health.

12. Resignation or Removal of Trustee.

(A) The Trustee hereunder (whether originally designated herein or appointed as "Successor Trustee") shall have the right to resign at any time by giving ninety (90) days written notice thereof to the Board of Health. Thereafter the Board of Health shall have the right and duty to appoint a Successor Trustee within said ninety (90) day period.

(B) The Board of Health shall have the right to remove the Trustee and to appoint a Successor Trustee at any time by giving ninety (90) days written notice to the Trustee. Following such notice, the Trustee shall have ninety (90) days in which to transfer all assets of the trust to the Successor Trustee and to make an accounting thereof to the Board of Health.

(C) Any Successor Trustee hereunder shall possess and exercise all powers and authorities herein conferred on the original Trustee, and similarly, said Successor Trustee shall be limited by such duties and responsibilities as are herein imposed upon the original Trustee.

13. Compensation of Trustee. For its services hereunder, the Trustee shall be paid a fee for its services under this Agreement as agreed upon between The Board of Health and Trustee.

14. Due Diligence and Cooperation. The Trustee shall act with due diligence in carrying out the provisions of this Agreement and shall cooperate with the Board of Health in all appropriate respects related thereto.

15. Relation to Original Trust Agreement and First Amended Trust Agreement. This Agreement is a continuation of the trust previously established between these parties, but this agreement shall amend, modify, replace and supersede each of the provisions of the original Trust Agreement and the First Amended Trust Agreement and the Amended Trust Agreement of 2005 and it shall constitute the entire agreement between the parties.

16. Amendment of Trust Provisions. The Board of Health reserves the right to amend and modify this Agreement, but in the exercise of such right it shall not undermine or remove the protection and coverage herein provided.

17. Governing Law. This Agreement shall be construed and regulated in all respects by the laws of the Commonwealth of Kentucky, without regard to its conflicts of law provisions.

IN WITNESS WHEREOF, the Board of Health and the Trustee have caused this Agreement to be duly executed by their respective representatives, each thereunto duly authorized by appropriate action of its governing body as the Effective Date.

LOUISVILLE METRO BOARD OF HEALTH

BY: William M. Alt

TRUSTEE:

JP MORGAN CHASE BANK, NA

BY: Ann Marie O'Boe, V.P.
(Name & Title)

THIS INSTRUMENT PREPARED BY:

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

BY: _____
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