RESOLUTION NO. _____, SERIES 2009

A RESOLUTION PURSUANT TO THE CAPITAL AND OPERATING BUDGET ORDINANCES, APPROVING THE APPROPRIATION TO FUND THE FOLLOWING NONCOMPETITIVELY NEGOTIATED RENEWAL PROFESSIONAL SERVICE CONTRACT - (DR. JAMES R. MCCAMMON, PH.D. - $20,000.00).

Sponsored By: _____

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The following appropriation for the listed contract is hereby approved:

DEPARTMENT OF PUBLIC HEALTH AND WELLNESS

$20,000.00 for a renewal noncompetitively negotiated Professional Service Contract with Dr. James R. McCammon, Ph.D. for the Public Health Laboratory as requested under federal CLIA standards from January 1, 2010 through December 31, 2010.

SECTION II: This Resolution shall take effect upon its passage and approval.

Kathleen J. Herron Metro Council Clerk	David W. Tandy President of the Council
Jerry E. Abramson Mayor	Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____

Health Department - PSC with James McCammon PHD for Public Health Lab Services Fiscal Year 2009-2010 Resolution Only 111009 [pr]
G:PSC Res James McCammonPH.DDr-1pr/ROC/acb11.10.09

CONTRACT DATA SHEET

PSC Type (check one): _____ New __x___Renewal _____Addendum

Contractor Information

1. Legal Name of Contractor: James R. McCammon, PhD
2. Address: 7322 Wesboro Rd.
3. City/ State & Zip: Louisville, KY 40222
4. Contact Person Name & Telephone Number: James R. McCammon, PhD (502)425-3119
5. Revenue Commission Taxpayer ID#:
6. If registration is not required please explain:
7. Is account in good standing:
8. Federal Tax ID # (SSN if sole proprietor):

Department Information

9. Requesting Department: Department of Public Health and Wellness
10. Contact Person Name & Telephone: Matt Rhodes (502) 574-6623

Contract Information

11. Not to exceed amount: $20,000 ($1,200/month) -- 40 hrs./month
12. Are expenses reimbursed? Yes
13. If yes list allowable expenses and maximum amount reimbursable: Local Travel $500 Out of Town Travel $3000
14. Beginning and ending date of the contract: January 1, 2010 – December 31, 2010
15. Coding: 1101 - 605 - 4130 - 411401- 521301
16. Scope & Purpose of the contract: To provide professional services to Public Health Laboratory as requested under federal CLIA standards. To assure lab remains complaint with all applicable laws, regulations and standards. Provide training and professional consultative services to the full-time lab administrator.

Authorizations

_____ The County Attorney has written the attached Professional Service Contract and has approved that document as to the legality of the instrument itself only and as to its form.

Department Director: _____ Date: 11/10/09

Signature certifies:

_____ *Funds are available* @ 10/30/09 TRAVEL upon approval and available budget.

_____ *Contractor is registered and in good standing with the Revenue Commission*

_____ *Human Relations Commission registration requirements have been met*

_____ Risk Management Division of Finance - Certifies Insurance requirements satisfied: 11-20-09

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 for PSC Contract # _____. 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.**

_____ 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, cr 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.

11/10/09

Requesting Department Director Date

**Mayor Date

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

MP

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"** or **"LMPHW",** and **JAMES R. MCCAMMON, PHD**, with offices located at 7322 Wesboro Road, Louisville, Kentucky 40222, herein referred to as **"CONSULTANT",**

W I T N E S S E T H:

WHEREAS, the Metro Government desires professional services for the Public Health Laboratory as requested under federal CLIA standards ; and

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

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

I. SCOPE OF PROFESSIONAL SERVICES

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

B. If from time to time Consultant needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then Consultant shall notify the proper agent of the Metro Government 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. Consultant, while performing the services rendered pursuant to this Agreement, may incidental thereto utilize agents or employees of such Consultant. However, such use must be documented in the monthly invoice submitted for those services rendered.

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

1. Carry out the responsibilities established by the Clinical Laboratory Improvement Act (CLIA) that can only be assumed by a qualified laboratory director;
2. Serve as the Responsible Official (RO) under the Select Agent Rule and coordinate activities with the National Laboratory Response Network including overseeing the operation of the bioterrorism laboratory operation;
3. Represent the LMPHW with other agencies and programs, i.e. the Kentucky State Laboratory, Region 6 Emergency Response District, and Louisville Metro Medical Subgroup Emergency Response subcommittee;
4. Function as the Laboratory Director for the Specialty Clinic and other small clinic laboratories that operate under a separate CLIA certificate from the 430 East Gray Laboratory;
5. Work closely with the laboratory administrator to ensure the proper operation of the laboratory;
6. Be accessible to the lab to provide onsite, telephone or electronic consultation as needed;
7. Ensure that the physical plant and environmental conditions are appropriate for the testing performed;
8. Ensure testing systems provide quality lab services for pre-analytic, analytic, and post-analytic phases of testing;
9. Ensure test methods selected have the capability of providing quality results;
10. Ensure verification procedures used are adequate to determine accuracy, precision, and other pertinent performance characteristics of the method;
11. Ensure that reports of test results include pertinent information required for interpretation;
12. Ensure that consultation is available to the lab's clients on matters relating to the quality of the test results reported and their interpretation concerning specific tests;
13. Ensure that an approved procedure manual is available to all personnel patient;
14. Ensure that prior to testing patients' specimens, all personnel have the appropriate education and experience, and receive the appropriate training for the type and complexity of services offered, and have demonstrated that they can perform all testing operations reliably to provide and report accurate results;

15. Ensure that lab personnel are performing the test methods as required for accurate and reliable results;
16. Ensure that policies and procedures are established for monitoring individuals who conduct pre-analytical, analytical, and post-analytical phases of testing to verify that they maintain competency;
17. Ensure that the lab is enrolled;
18. Ensure that PT results are returned on time to the PT program;
19. Ensure that the appropriate staff reviews PT results and the corrective action plan is followed when PT results are found to be unsatisfactory;
20. Ensure that PT samples are tested in the same manner as patient samples;
21. Ensure that quality control and quality assurance programs are established and maintained to identify failures in quality as they occur;
22. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;
23. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;
24. Ensure that remedial actions are taken and documented whenever significant deviations from the lab's established performance characteristics are identified, and patient test results are reported only when the system is functioning properly.

D. LMPHW shall provide:

1. On-site office space at no charge.
2. Office Management support.

II. FEES AND COMPENSATION

A. Consultant shall be reimbursed **TWELVE HUNDRED DOLLARS ($1,200.00)** per month for professional services rendered according to the terms of this Agreement. The Metro Government shall reimburse Consultant for operation of his vehicle on Metro Government business. The compensation rate shall be the same rate paid to Metro Government employees. The amount of reimbursement for local travel shall not exceed **FIVE HUNDRED DOLLARS ($500.00)** and the amount for out of town travel shall not exceed **THREE THOUSAND DOLLARS ($3,000.00)**. The Metro Government shall compensate Consultant for attending the annual conference of State and Local Laboratory Directors. Total compensation payable to Consultant for services

rendered pursuant to this agreement, including out-of-pocket expenses, shall not exceed **TWENTY THOUSAND DOLLARS ($20,000.00).**

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 invoice shall indicate a descriptive daily accounting of the hours expended in service under the contract, the particular nature of such service and out-of-pocket expenses. Copies of invoices or receipts for out-of-pocket expenses and other third party charges must be included with the Consultant's invoice when payment is requested. In the event payment is made in lump sum at the end of the service period, Consultant's final invoice shall indicate a descriptive daily accounting of hours expended as described heretofore.

C. Consultant 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. Consultant, to the extent that it provides the same or related services to other parties agrees to pro-rate its billings and out-of-pocket expenses to the Metro Government which are of benefit to the other parties 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 or expenses which are considered to be double billing (i.e. billing two different parties for the same work or expense).

E. Consultant 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. Consultant agrees that original invoices that are not in Metro Government possession by this time will not be paid and Consultant agrees to waive its right to compensation for services billed under such invoices.

III. DURATION

A. This Agreement shall begin January 1, 2010 and shall continue through and including December 31, 2010.

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

C. In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed 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 Consultant of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

IV. EMPLOYER/EMPLOYEE RELATIONSHIP

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

V. RECORDS-AUDIT

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

VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

Consultant agrees to indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials,

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

VII. INSURANCE REQUIREMENTS

LMPHW shall provide medical malpractice and general liability insurance and indemnification to Consultant for acts and omissions of Consultant performed in furtherance of LMPHW business and only within the scope of his duties as set forth in this Agreement. The insurance and indemnification coverage provided by LMPHW shall be by and through the Louisville Metro Board of Health Self-Insurance Trust Agreement and said coverage shall be limited in accordance with the express terms of the Trust Agreement. This provision shall in no way affect or limit any insurance coverage provided by the Metro Government to employees of LMPHW and shall not be construed as a waiver of any sovereign or other immunity afforded LMPHW by law.

VIII. REPORTING OF INCOME

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of $600.00 paid to non-corporate

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

IX. 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 the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. 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.

X. AUTHORITY

The Consultant, by execution of this Agreement, does hereby warrant 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.

XI. 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.

XII. 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.

XIII. OCCUPATIONAL HEALTH AND SAFETY

Consultant agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, *29 U.S.C. 650 et. seq.*, as amended, and KRS Chapter 338. Consultant also agrees to notify the Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Consultant performs work under this Agreement. Consultant agrees to indemnify,

defend and hold the Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

XIV. SUCCESSORS

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

XV. 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.

XVI. 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.

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

XVIII. 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.

XIX. MISCELLANEOUS Consultant 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 and, in that regard, Consultant agrees to comply 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. Consultant shall hold in strictest confidence all documentation, information, and observations gathered in the performance of this Agreement, and Consultant agrees to sign the Health Department Business Associate Agreement. Consultant 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 the Metro Government's Business Associate Agreement.

The Metro Government and Consultant 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.

Consultant certifies that none of its officers, stockholders, partners, owners or employees is an officer, stockholder, partner, owner or employee of the Louisville Metro Government or its Department of Public Health and Wellness. Consultant agrees to comply with all constitutional, statutory, regulatory and common law requirements adhered to by the Metro Government pertaining to conflicts of interest.

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

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

APPROVED AS TO FORM AND LEGALITY:

_____

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

Date:_____

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

_____

DR. ADEWALE TROUTMAN, M.D., DIRECTOR, DEPARTMENT FOR PUBLIC HEALTH AND WELLNESS

Date: 11/18/09

DR. JAMES R. MCCAMMON, PH.D.

_____

DR. JAMES R. MCCAMMON, PH.D.

Date: 11/17/09

Taxpayer Identification No. (TIN):_____

Louisville/Jefferson County Revenue Commission Account No.:_____

Health Department - PSC with James McCammon PHD for Public Health Lab Services Fiscal Year 2009-2010
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