

AGREEMENT

35386

THIS AGREEMENT is made and entered, in duplicate, as of September 20, 2019, for reference purposes only, pursuant to Resolution No. RES-19-0126, adopted by the City Council of the City of Long Beach at its meeting held on August 20, 2019, by and between FORENSIC NURSING SPECIALISTS, INC., a California corporation ("Contractor"), with a place of business at 10413 Los Alamitos Blvd., Los Alamitos, California 90720, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City has contracted with Forensic Nursing Specialists, Inc., since July 1994 to provide medical examinations, evidence collection, and treatment for victims of sexual assault; and

WHEREAS, Forensic Nurse Specialists, Inc. provides 24-hour service; and

WHEREAS, this is a mandatory expense as failure to provide a victim of sexual assault with an examination by a qualified healthcare professional, hospital, or other emergency medical facility would be a violation of the California Penal Code; and

WHEREAS, Forensic Nurse Specialists, Inc. is the sole source providing this service in the Long Beach regional area and there are currently no specific registries that utilizes forensic nurses solely for the purpose of exams; and

WHEREAS, City did by Resolution No. RES-19-0126 determine that the City's need for medical examinations, evidence collection, and treatment for victims of sexual assault could only be met by Contractor and, by reason of the foregoing, no useful purpose would be served by advertising for bids to medical examinations, evidence collection, and treatment for victims of sexual assault, and to do so would constitute an idle and useless act and an unnecessary expenditure of public funds;

WHEREAS, the City desires Contractor to provide these medical services for the City;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions herein, the parties agree as follows:

1                   1. Contractor shall provide the following services to the City for the term  
2 hereof:

3                   A. Twenty-four (24) hour availability for the timely provisions of  
4 medical examinations, evidence collection, treatment, and lab tests, if appropriate,  
5 counseling, and referrals for juvenile and adult victims of sexual assault crimes.

6                   B. Courtroom expert witness testimony.

7                   C. The equipment, materials, and services with respect to each  
8 victim of sexual assault or child sexual abuse as per the Medical Protocol for  
9 Examination of Sexual Assault and Child Sexual Abuse Victims identified in Exhibit  
10 "A", attached hereto and incorporated herein by this reference, at costs in  
11 accordance with Exhibit "B", attached hereto and incorporated herein by this  
12 reference. A copy of Exhibit "A" is on file at the Long Beach Police Department  
13 and a copy will be provided to Contractor upon request.

14                  2. The term of this Agreement shall commence at midnight on October  
15 31, 2019, and shall terminate at 11:59 p.m. on October 30, 2021. City shall have the  
16 option to extend the term of this Agreement for two (2) years, with the option to renew for  
17 two additional one-year periods, at the discretion of the City Manager.

18                  3. Contractor shall keep an itemized record of all services performed by  
19 Contractor for City under this Agreement, which records shall be made available at all  
20 reasonable times for inspection by the City Manager and City Auditor, or their authorized  
21 representatives.

22                  4. City shall pay Contractor hereunder in due course of payments of the  
23 City following the end of each calendar month and receipt from Contractor of invoices  
24 therefore, covering said services performed during said month for which payment has not  
25 heretofore been made by City to Contractor, with the following stipulation: In order for the  
26 City to maintain necessary cost accounting controls, all invoices covering said services  
27 must be submitted within thirty (30) days after the end of the month in which services  
28 were performed. Any invoices submitted after this time period will not be paid by the City.

1 The total compensation to be paid during the period from October 1, 2019, through  
2 October 30, 2021, shall not exceed One Hundred Twenty Thousand Dollars  
3 (\$120,000.00).

4 5. Either party hereto may terminate this Agreement at any time by  
5 giving to the other party notice of termination at least thirty (30) days prior to the effective  
6 date of such termination.

7 6. Any notices required or desired to be given under this Agreement  
8 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first  
9 class, postage prepaid, to Contractor at the address first stated above, and to the City at  
10 411 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.

11 7. As a condition precedent to the effectiveness of this Agreement,  
12 Contractor shall procure and maintain, at Contractor's expense for the duration of this  
13 Agreement, from insurance companies that are admitted to write insurance in California  
14 and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-  
15 admitted insurance companies subject to Section 1763 of the California Insurance Code  
16 and that have ratings of, or equivalent to, A:VIII by A.M. Best Company, the following  
17 insurance:

18 A. Commercial general liability insurance (equivalent in scope to ISO  
19 form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000  
20 per each occurrence and \$2,000,000 general aggregate. This coverage shall  
21 include, but not be limited to, broad form contractual liability, cross liability,  
22 independent contractors liability, and products and completed operations liability.  
23 City, its boards and commissions, and its officials, employees, and agents shall be  
24 named as additional insureds by endorsement (on City's endorsement form or on  
25 an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11  
26 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG  
27 20 37 07 04), and this insurance shall contain no special limitations on the scope  
28 of protection given to City, its boards and commissions, and its officials,

1 employees, and agents. This policy shall be endorsed to state that the insurer  
2 waives its right of subrogation against City, its boards and commissions, and its  
3 officials, employees, and agents.

4 B. Workers' Compensation insurance as required by the California  
5 Labor Code and employer's liability insurance in an amount not less than  
6 \$1,000,000. This policy shall be endorsed to state that the insurer waives its right  
7 of subrogation against City, its boards and commissions, and its officials,  
8 employees, and agents.

9 C. Professional liability or errors and omissions insurance in an amount  
10 not less than \$1,000,000 per claim.

11 D. Commercial automobile liability insurance (equivalent in scope to  
12 ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not  
13 less than \$500,000 combined single limit per accident.

14 Any self-insurance program, self-insured retention, or deductible must be  
15 separately approved in writing by City's Risk Manager or designee and shall protect City,  
16 its boards and commissions, and its officials, employees, and agents in the same manner  
17 and to the same extent as they would have been protected had the policy or policies not  
18 contained retention or deductible provisions.

19 Each insurance policy shall be endorsed to state that coverage shall not be  
20 reduced, non-renewed, or canceled except after thirty (30) days prior written notice to  
21 City, shall be primary and not contributing to any other insurance or self-insurance  
22 maintained by City, and shall be endorsed to state that coverage maintained by City shall  
23 be excess to and shall not contribute to insurance or self-insurance maintained by  
24 Contractor. Contractor shall notify City in writing within five (5) days after any insurance  
25 has been voided by the insurer or cancelled by the insured.

26 If this coverage is written on a "claims made" basis, it must provide for an  
27 extended reporting period of not less than one hundred eighty (180) days, commencing  
28 on the date this Agreement expires or is terminated, unless Contractor guarantees that

1 Contractor will provide to City evidence of uninterrupted, continuing coverage for a period  
2 of not less than three (3) years, commencing on the date this Agreement expires or is  
3 terminated.

4 Contractor shall require that all subcontractors or contractors that  
5 Contractor uses in the performance of these services maintain insurance in compliance  
6 with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

7 Prior to the start of performance, Contractor shall deliver to City certificates  
8 of insurance and the endorsements for approval as to sufficiency and form. In addition,  
9 Contractor shall, within thirty (30) days prior to expiration of the insurance, furnish to City  
10 certificates of insurance and endorsements evidencing renewal of the insurance. City  
11 reserves the right to require complete certified copies of all policies of Contractor, and of  
12 Contractor's subcontractors and contractors, at any time. Contractor shall make  
13 available to City's Risk Manager or designee all books, records, and other information  
14 relating to this insurance during normal business hours.

15 Any modification or waiver of these insurance requirements shall only be  
16 made with the approval of City's Risk Manager or designee. Not more frequently than  
17 once a year, City's Risk Manager or designee may require that Contractor, Contractor's  
18 subcontractors and contractors change the amount, scope, or types of coverages  
19 required in this Section if, in his or her sole opinion, the amount, scope, or types of  
20 coverages are inadequate.

21 The procuring or existence of insurance shall not be construed or deemed  
22 as a limitation on liability relating to Contractor's performance or as full performance of or  
23 compliance with the indemnification provisions of this Agreement.

24 8. In performing services hereunder, Contractor is an independent  
25 contractor and not an employee, agent, or representative of the City. Contractor  
26 acknowledges and agrees that the City will not secure workers' compensation or pay  
27 unemployment insurance to, or on Contractor's behalf, nor provide any of the usual  
28 rights, benefits, or privileges of City employees.

1           9. Consultant shall indemnify, protect, and hold harmless City, its  
2 Boards, Commissions, officials, employees, and agents ("Indemnified Parties") from and  
3 against any and all liability, claims, demands, damage, loss, obligations, causes of action,  
4 proceedings, awards, fines, judgments, penalties, costs, and expenses, including  
5 attorneys' fees, court costs, expert and witness fees, and other costs and fees of  
6 litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with  
7 (1) Consultant's breach or failure to comply with any of its obligations contained in this  
8 Agreement, including any obligations arising from the Project's compliance with or failure  
9 to comply with applicable laws, including all applicable federal and state labor  
10 requirements including, without limitation, the requirements of California Labor Code  
11 section 1770 et seq., or (2) negligent or willful acts, errors, omissions, or  
12 misrepresentations committed by Consultant, its officers, employees, agents,  
13 subcontractors, or anyone under Consultant's control, in the performance of work or  
14 services under this Agreement (collectively "Claims" or individually "Claim").

15           In addition to Consultant's duty to indemnify, Consultant shall have a  
16 separate and wholly independent duty to defend Indemnified Parties, at Consultant's  
17 expense by legal counsel approved by City, from and against all Claims, and shall  
18 continue this defense until the Claims are resolved, whether by settlement, judgment, or  
19 otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of  
20 Consultant shall be required for the duty to defend to arise. City shall notify Consultant of  
21 any Claim, shall tender the defense of the Claim to Consultant, and shall assist  
22 Consultant, as may be reasonably requested, in the defense.

23           If a court of competent jurisdiction determines that a Claim was caused by  
24 the sole negligence or willful misconduct of Indemnified Parties, Consultant's costs of  
25 defense and indemnity shall be (1) reimbursed in full if the court determines sole  
26 negligence by the Indemnified Parties, or (2) reduced by the percentage of willful  
27 misconduct attributed by the court to the Indemnified Parties.

28           The provisions of this Section shall survive the expiration or termination of

1 this Agreement.

2 10. This Agreement, including all exhibits, shall not be amended nor any  
3 provision or breach waived except in writing signed by the parties.

4 11. This Agreement shall be governed by and construed according to the  
5 laws of the State of California disregarding principles of conflicts of laws.

6 12. This Agreement, including all exhibits, constitutes the entire  
7 understanding of the parties and supersedes all other agreements, oral or written, with  
8 respect to the subject matter herein.

9 13. The acceptance of any services or the payment of any money by the  
10 City shall not operate as a waiver of any provision hereof, or of any rights or remedies  
11 hereunder. The waiver of any breach of any provision of this Agreement shall not  
12 constitute a waiver of any other or subsequent breach.

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OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802-4664

1 IN WITNESS WHEREOF, the parties have caused this document to be duly  
2 executed with all formalities required by law as of the date first stated above.

3 FORENSIC NURSING SPECIALISTS, INC., a  
4 California corporation

5 10-10, 2019 By Melinda Wheeler  
6 Name Melinda Wheeler  
7 Title President

8 \_\_\_\_\_, 2019 By \_\_\_\_\_  
9 Name \_\_\_\_\_  
10 Title \_\_\_\_\_

11 "Contractor"

12 CITY OF LONG BEACH, a municipal  
13 corporation

14 October 25, 2019 By Rebecca L. Gerner  
15 City Manager

16 "City"

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

17 This Agreement is approved as to form on October 18, 2019.

18 CHARLES PARKIN, City Attorney

19 By: [Signature]  
20 Deputy  
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# EXHIBIT "A"

THIS EXHIBIT HAS BEEN REMOVED DUE TO GRAPHIC NATURE OF THE CONTENT.  
UPON REQUEST, A COMPLETE COPY CAN BE PROVIDED THROUGH THE LONG BEACH  
POLICE DEPARTMENT.

# EXHIBIT "B"

## EXHIBIT B- 10/1/2019

### FORENSIC NURSE SPECIALISTS, INC.

#### Contractor Fee Schedule

Item or Service Provided	<u>Cost Per Unit</u>
Victim sexual assault examinations evidence collection and treatment (1)	\$850.00
Mobile Trauma Exams for Victims of sexual assault at other hospital locations within Los Angeles County	\$900.00
Suspect sexual assault examinations and evidence collection	\$400.00
Follow-up examination	\$100.00
Expert witness testimony (2)	\$400.00
Touch DNA examinations / swabs (3)	\$375.00

(1) Sexual assault examinations include ANY call out response requested of the FNS by the Long Beach Police Department to the SART Exam Center.

(2) Expert witness testimony will be billed at \$150 per hour, to a maximum daily limit of \$400 per day per case.

(3) This is a pilot program. After the first 25 examinations, the cost will be negotiated and mutually agreed on by Forensic Nurse Specialists, Inc. and City of Long Beach Police Department