

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

AGREEMENT

34138

THIS AGREEMENT is made and entered, in duplicate, as of October 7, 2015 for reference purposes only, pursuant to Resolution No. RES-15-0128, adopted by the City Council of the City of Long Beach at its meeting held on October 6, 2015, by and between FORENSIC NURSING SPECIALISTS, INC., a California corporation ("Contractor"), with a place of business at 3373 Cerritos Avenue, Los Alamitos, California 90720, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City requires assistance to provide medical examinations, evidence collection, and appropriate treatment with respect to victims of sexual assault; and

WHEREAS, Contractor is willing and able to provide these medical services required by the City at a reasonable cost; and

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

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

B. Courtroom expert witness testimony.

C. The equipment, materials, and services with respect to each victim of sexual assault or child sexual abuse as per the Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims identified in Exhibit "A", attached hereto and incorporated herein by this reference, at costs in accordance with Exhibit "B", attached hereto and incorporated herein by this

1 reference. A copy of Exhibit "A" is on file in the office of the Director of the
2 Department of Health and Human Services and a copy will be provided to
3 Contractor upon request.

4 2. The term of this Agreement shall commence at midnight on
5 November 1, 2015, and shall terminate at 11:59 p.m. on October 30, 2017. City shall
6 have the option to extend the term of this Agreement for two (2) separate, consecutive
7 periods of one (1) year each, upon authorization by the City Manager.

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

12 4. City shall pay Contractor hereunder in due course of payments of the
13 City following the end of each calendar month and receipt from Contractor of invoices
14 therefore, covering said services performed during said month for which payment has not
15 heretofore been made by City to Contractor, with the following stipulation: In order for the
16 City to maintain necessary cost accounting controls, all invoices covering said services
17 must be submitted within thirty (30) days after the end of the month in which services
18 were performed. Any invoices submitted after this time period will not be paid by the City.
19 The total compensation to be paid during the period from November 1, 2015, through
20 October 30, 2017, shall not exceed One Hundred and Twenty Thousand Dollars
21 (\$120,000.00).

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

25 6. Any notices required or desired to be given under this Agreement
26 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first
27 class, postage prepaid, to Contractor at the address first stated above, and to the City at
28 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.

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

8 A. Commercial general liability insurance (equivalent in scope to ISO
9 form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000
10 per each occurrence and \$2,000,000 general aggregate. This coverage shall
11 include, but not be limited to, broad form contractual liability, cross liability,
12 independent contractors liability, and products and completed operations liability.
13 City, its boards and commissions, and its officials, employees, and agents shall be
14 named as additional insureds by endorsement (on City's endorsement form or on
15 an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11
16 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG
17 20 37 07 04), and this insurance shall contain no special limitations on the scope
18 of protection given to City, its boards and commissions, and its officials,
19 employees, and agents. This policy shall be endorsed to state that the insurer
20 waives its right of subrogation against City, its boards and commissions, and its
21 officials, employees, and agents.

22 B. Workers' Compensation insurance as required by the California
23 Labor Code and employer's liability insurance in an amount not less than
24 \$1,000,000. This policy shall be endorsed to state that the insurer waives its right
25 of subrogation against City, its boards and commissions, and its officials,
26 employees, and agents.

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

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

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

9 Each insurance policy shall be endorsed to state that coverage shall not be
10 reduced, non-renewed, or canceled except after thirty (30) days prior written notice to
11 City, shall be primary and not contributing to any other insurance or self-insurance
12 maintained by City, and shall be endorsed to state that coverage maintained by City shall
13 be excess to and shall not contribute to insurance or self-insurance maintained by
14 Contractor. Contractor shall notify City in writing within five (5) days after any insurance
15 has been voided by the insurer or cancelled by the insured.

16 If this coverage is written on a "claims made" basis, it must provide for an
17 extended reporting period of not less than one hundred eighty (180) days, commencing
18 on the date this Agreement expires or is terminated, unless Contractor guarantees that
19 Contractor will provide to City evidence of uninterrupted, continuing coverage for a period
20 of not less than three (3) years, commencing on the date this Agreement expires or is
21 terminated.

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

25 Prior to the start of performance, Contractor shall deliver to City certificates
26 of insurance and the endorsements for approval as to sufficiency and form. In addition,
27 Contractor shall, within thirty (30) days prior to expiration of the insurance, furnish to City
28 certificates of insurance and endorsements evidencing renewal of the insurance. City

1 reserves the right to require complete certified copies of all policies of Contractor, and of
2 Contractor's subcontractors and contractors, at any time. Contractor shall make
3 available to City's Risk Manager or designee all books, records, and other information
4 relating to this insurance during normal business hours.

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

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

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

19 9. Consultant shall indemnify, protect, and hold harmless City, its
20 Boards, Commissions, officials, employees, and agents ("Indemnified Parties") from and
21 against any and all liability, claims, demands, damage, loss, obligations, causes of action,
22 proceedings, awards, fines, judgments, penalties, costs, and expenses, including
23 attorneys' fees, court costs, expert and witness fees, and other costs and fees of
24 litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with
25 (1) Consultant's breach or failure to comply with any of its obligations contained in this
26 Agreement, including any obligations arising from the Project's compliance with or failure
27 to comply with applicable laws, including all applicable federal and state labor
28 requirements including, without limitation, the requirements of California Labor Code

1 section 1770 et seq., or (2) negligent or willful acts, errors, omissions, or
2 misrepresentations committed by Consultant, its officers, employees, agents,
3 subcontractors, or anyone under Consultant's control, in the performance of work or
4 services under this Agreement (collectively "Claims" or individually "Claim").

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

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

18 The provisions of this Section shall survive the expiration or termination of
19 this Agreement.

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

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

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

27 13. The acceptance of any services or the payment of any money by the
28 City shall not operate as a waiver of any provision hereof, or of any rights or remedies

1 hereunder. The waiver of any breach of any provision of this Agreement shall not
2 constitute a waiver of any other or subsequent breach.

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

5 FORENSIC NURSING SPECIALISTS, INC., a
6 California corporation

7 12 / 1, 2015

By Malinda Wheeler
8 Name Malinda Wheeler
9 Title President

10 _____, 2015

By _____
11 Name _____
12 Title _____

13 "Contractor"

14 CITY OF LONG BEACH, a municipal
15 corporation

16 December 24, 2015

By [Signature]
17 City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

18 "City" Assistant City Manager

19 This Agreement is approved as to form on December 15, 2015.

20 CHARLES PARKIN, City Attorney

21 By: [Signature]
22 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- 7.1.15

Contractor Fee Schedule

<u>Item or Service Provided</u>	<u>Cost Per Unit</u>
Victim sexual assault examinations evidence collection and treatment (1)	\$730.00
Suspect sexual assault examinations and evidence collection	\$350.00
Follow-up examination	\$100.00
Expert witness testimony (2)	\$350.00
Touch DNA examinations / swabs (3)	\$375.00

- (1) Sexual assault examinations include ANY call out response requested of the Sexual Assault Nurse Examiner by the Long Beach Police Department.
- (2) Expert witness testimony will be billed at \$100 per hour, to a maximum daily limit of \$350 per day per case.
- (3) This is a pilot program. After the first five examinations, the cost will be negotiated and mutually agreed on by Forensic Nurse Specialists, Inc. and City of Long Beach Police Department.