

## AGREEMENT

This Agreement made this \_\_\_\_ day of November 2009, by and between Bruce Michael Cappo, Ph.D. of Clinical Associates, P.A., located at 8629 Bluejacket Street, Suite 100, Lenexa, Kansas, hereinafter referred to as "Dr. Cappo," and the City of Overland Park, Kansas, a municipal corporation, hereinafter referred to as "City," the City of Overland Park being a City in the first class, located at 8500 Santa Fe, Overland Park, Kansas 66212.

The parties to this Agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

1. **Psychological Services.** Dr. Cappo shall provide the following psychological services at those times indicated herein which are changeable by mutual consent and on an as needed basis to the Police Department:
  - a. Pre-employment psychological examinations with written reports for police officers, reserve officers, and communications officer candidates, as well as any other individual referred for such examinations by the Police Department. All pre-employment psychological examinations shall be conducted post-job offer and shall include written reports that satisfy the City's requirements pursuant to the Americans with Disabilities Act.
  - b. Re-testing of candidates for pre-employment psychological examinations with written reports. Dr. Cappo and other departmental psychological consultants will consult with the Department regarding appropriate assignment for pre-employment and re-testing of applicants.
  - c. Critical incident debriefings for officers who have been involved in critical incidents involving high stress, to include shooting incidents and other incidents as determined by the Chief of Police.
  - d. Stress management counseling for undercover officers and others as cyber crimes directed by the Chief of Police.
  - e. Professional consultation with Police Department staff members to promote executive development, education and training, and other matters related to the area of mental health as directed by the Chief of Police.
  - f. At the request of the Police Department, Dr. Cappo may provide services in addition to those described herein. Dr. Cappo will be compensated at the same hourly rate for those additional services.
2. **City's reliance on Dr. Cappo's professional expertise.** The parties agree that the City is relying on Dr. Cappo's professional expertise in the area of psychological services to make important decisions relating to the operation of the Police Department.

**3. Schedule and time of performance.**

- a. Dr. Cappo agrees to provide the professional services set forth in Paragraph one (1) above for a minimum of one (1) day each week, four (4) hours per day for a period of forty-six (46) weeks. The days of the week and the weeks of the year Dr. Cappo will devote to providing psychological services to the City shall be agreed to by the parties and may be decreased or increased as needed.
- b. In addition to being available for the minimum period of four (4) hours each week, Dr. Cappo agrees to provide the aforementioned psychological services on an as needed basis.

**4. Services to be requested as needed by the Police Department.** The parties agree and understand that all services rendered by Dr. Cappo pursuant to this Agreement shall be on an as needed basis and solely at the request of the Police Department.

**5. Consideration.** In consideration of the psychological services set forth in Paragraph one (1) above, the Police Department shall pay Dr. Cappo at the rate of one hundred thirty and 00/100 dollars (\$130.00) per hour of service. Portions of an hour shall be prorated to the nearest fifteen (15) minutes. Should Dr. Cappo fulfill the requirements of this Agreement to provide psychological services a minimum of four (4) hours per week for forty-six (46) weeks, the consideration for services rendered during this period would total twenty three thousand nine hundred twenty and 00/100 dollars (\$23,920.00). The parties agree that Dr. Cappo shall only receive payment for those hours or portions of hours actually worked. Dr. Cappo shall provide a detailed billing statement for all services rendered to the City.

**6. Services requested by Police Department.** Dr. Cappo agrees and understands that the professional services rendered pursuant to this Agreement are requested by the Overland Park Police Department and all counseling, findings, and opinions whether written or otherwise, shall be communicated to the Overland Park Police Department as the Department requests it, subject to the confidentiality limitations of the Americans with Disabilities Act.

**7. Term of Agreement.** This Agreement shall commence January 1, 2010, and shall continue in effect until Midnight, December 31 of the year of execution. The term of this Agreement shall be automatically extended at the end of the initial term for a twelve month period, and in a like manner in succeeding years, unless either party notifies the other, in writing, pursuant to Section 8, below, that the party intends to terminate the Agreement and it will not be extended.

Notwithstanding the foregoing or any other language contained in this Agreement, the City is obligated to pay only such periodic payments or monthly installments thereof as may lawfully be made from funds budgeted and approved for the purpose. The City agrees to notify Dr. Cappo at the earliest possible time of the non-availability of funds from which to make any periodic payment or monthly installment.

**8. Right of termination.** Either party has a right to terminate this Agreement with or without cause by giving thirty (30) days prior written notice to the other party. The City may terminate this Agreement at any time should Dr. Cappo fail to fulfill the obligations set forth in this Agreement.

**9. Agreement not exclusive.** This Agreement is not an exclusive agreement for services between the parties. The Police Department has an absolute right to use or seek psychological services from anyone at any time. In addition, the Police Department has an absolute right to have any work performed by Dr. Cappo reviewed by anyone it chooses.

**10. Insurance.** Dr. Cappo shall secure and maintain throughout the duration of this Agreement, insurance of such types and in at least such amounts as set forth herein. Professional liability insurance must be maintained for a period of no less than two years after the term of this Agreement. Dr. Cappo shall provide certificates of insurance and renewals thereof to the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate. All insurance coverage and forms are subject to the approval of the City and can be rejected if deemed unacceptable.

Commercial General Liability (Occurrence)

Limits-

General Aggregate:	\$500,000.00
Personal and Advertising Injury:	\$500,000.00
Each Occurrence:	\$500,000.00

Professional Liability (Claims Made)

Limits-

Each Wrongful Act:	\$1,000,000.00
Aggregate:	\$1,000,000.00

**11. Non-discrimination.** Dr. Cappo shall observe the provisions of the Kansas Act against Discrimination to include the specific requirements set forth in Attachment A attached hereto, and all federal laws concerning discrimination, and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, sex, physical disability, national origin, or ancestry. If Dr. Cappo violates the provisions of the Kansas Act against Discrimination, federal laws, or the provisions of this paragraph, he shall be deemed to have breached the conditions of this Agreement and as a result the City may cancel, terminate, or suspend the Agreement, in whole or in part.

**12. Non-Assignment.** Dr. Cappo agrees not to assign or transfer the responsibilities of this Agreement without the permission of the Police Department.

**13. Performance of services by Dr. Cappo.** Dr. Cappo agrees that he shall perform the professional services personally and that he shall not utilize other professionals or staff to perform services unless agreed to in writing by the Police Department.

**14. Hold harmless.** Dr. Cappo agrees to defend, indemnify, and hold harmless the Overland Park Police Department, the City of Overland Park and its agents and/or employees from any and all claims, settlements, and judgments for personal injury, property damage, death, or any other cause of action arising out of the services rendered pursuant to this Agreement. Neither acceptance of the completed

work nor payment therefore shall be a release from Dr. Cappo's obligation under this paragraph.

**15. Independent contractor.** In no event, while performing the obligations under this Agreement, shall Dr. Cappo be authorized to act as an employee of the City, but shall for all purposes be deemed an independent contractor in his relation to the City.

**16. Entire Agreement.** This Agreement contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained herein shall be valid or binding.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

By \_\_\_\_\_  
Carl Gerlach, Mayor

ATTEST:

\_\_\_\_\_  
Marian Cook  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
John J. Knoll  
Senior Assistant City Attorney

Bruce Michael Cappo, Ph.D.

\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Notary Public

My commission Expires:

\_\_\_\_\_

## ATTACHMENT A

Dr. Cappo agrees that:

1. He shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, national origin, ancestry, or age;
2. In all solicitations or advertisements for employees, he shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. If he fails to comply with the manner in which he reports to the Commission in accordance with the provisions of K.S.A. 44-1 031 and amendments thereto, he shall be deemed to have breached the present contract and it may be canceled, terminated, or suspended, in whole or in part, by the contracting agency;
4. If he is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, he shall be deemed to have breached the present contract and it may be canceled, terminated, or suspended, in whole or in part, by the contracting agency; and
5. He shall include the provisions of paragraphs (1) through (4) above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
6. He further agrees that he shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1 111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other federal, state and local laws, ordinances, and regulations applicable to this project and to furnish any certification required by any federal, state or local laws, ordinances, and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.