

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
LYNXDX, INC.
AND THE CITY OF ANN ARBOR
FOR MEDICAL DIAGNOSTIC TESTING FOR SARS-COVID-2**

This agreement ("Agreement") is between the City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48104 ("City"), and LynxDx Incorporated ("Contractor"), a Michigan Corporation with its address at 120 West Main Street, Suite 300, Northville, Michigan 48167. City and Contractor are referred to collectively herein as the "Parties." The Parties agree as follows:

I. DEFINITIONS

Administering Service Area/Unit means Safety Unit.

Contract Administrator means Doug Forsyth, Safety Manager, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement.

Project means SARS-CoV-2 PCR Testing.

II. DURATION

Contractor shall commence performance on October 11, 2021 ("Commencement Date"). This Agreement shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in Article XI. The terms and conditions of this Agreement shall apply to the earlier of the Effective Date or Commencement Date.

III. SERVICES

- A. The Contractor agrees to provide Medical Testing, Courier Services and Web Portal Development and Administration of to Share Employee Test Results ("Services") in connection with the Project as described in Exhibit A. The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the compensation shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. The total fee to be paid to Contractor for the Services shall not exceed \$25,000.

- B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement. The Contractor shall also comply with and be subject to the City of Ann Arbor policies applicable to independent contractors
- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City (if any) except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. CONFIDENTIALITY

A. Each party anticipates that it may be necessary to provide access to information of a confidential nature of such party, the Affiliates or a third party ("Confidential Information") to the other party in the performance of this Agreement and any Statement of Work. "Confidential Information" means any information or data in oral, electronic or written form which the receiving party knows or has reason to know is proprietary or confidential and which is disclosed by a party in connection with this Agreement or which the receiving party may have access to in connection with this Agreement. Confidential Information will not include information which: (a) becomes known to the public through no act of the receiving party; (b) was known to the receiving party, or becomes known to the receiving party from a third party having the right to disclose it and having no obligation of confidentiality to the disclosing party with respect to the applicable information; or (c) is independently developed by agents, employees or subcontractors of the receiving party who have not had access to such information. To the extent practicable, Confidential Information should clearly be identified or labeled as such by the disclosing party at the time of disclosure or as promptly thereafter as possible, however, failure to so identify or label such Confidential Information will not be evidence that such information is not confidential or protectable.

B. Each party agrees to hold the other party's Confidential Information in a manner at least as protective as it holds its own Confidential Information of like kind but to use not less than a reasonable degree of care. Disclosures of the other party's Confidential Information will be restricted (i) to those individuals who are participating in the performance of this Agreement or the applicable Statement of Work and need to know such Confidential Information for purposes of providing or receiving the services or otherwise in connection with this Agreement or the applicable Statement of Work, or (ii) to its business, legal and financial advisors, each on a confidential basis. Each party agrees not to use any Confidential Information of the other Party for any purpose other than the business purposes contemplated by this Agreement and the applicable Statement of Work. Upon the written request of a party, the other party will either return or certify the destruction of the Confidential Information of the other party.

C. If a receiving party is required by law, rule or regulation, or requested in any judicial or administrative proceeding or by any governmental or regulatory authority, to disclose Confidential Information of the other party, the receiving party will give the disclosing party

prompt notice of such request so that the disclosing party may seek an appropriate protective order or similar protective measure and will use reasonable efforts to obtain confidential treatment of the Confidential Information so disclosed.

D. Any information exchanged between the Parties may be subject to disclosure under the Michigan Freedom of Information Act. Notwithstanding, LynxDX will be provided the opportunity to redact any information prior to disclosure under the criteria set forth in § 15.243 of the Michigan Freedom of Information Act.

V. INDEPENDENT CONTRACTOR

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

Contractor does not have any authority to execute any contract or agreement on behalf of the City, and is not granted any authority to assume or create any obligation or liability on the City's behalf, or to bind the City in any way.

VI. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Article III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- C. The Contractor shall keep complete records of work performed (e.g. tasks performed, hours allocated, etc.) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.
- D. The total fee to be paid to Contractor for the Services shall not exceed \$25,000.

VII. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain from the Effective Date or Commencement Date of this Agreement (whichever is earlier) through the conclusion of this Agreement, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage that may arise under this Agreement; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor, or anyone employed by them directly or indirectly. Prior to commencement of work under this Agreement, Contractor shall provide to the City documentation satisfactory to the City, through City-approved means (currently myCOI), demonstrating it has obtained the policies and endorsements required by Exhibit C. Contractor shall add registration@mycoitracking.com to its safe sender's list so that it will receive necessary communication from myCOI. When requested, Contractor shall provide the same documentation for its subcontractor(s) (if any).
- B. Any insurance provider of Contractor shall be authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-authorized insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

VIII. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

- B. **Living Wage.** If the Contractor is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

IX. WARRANTIES BY THE CONTRACTOR

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses (if applicable) necessary to perform the Services pursuant to this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services pursuant to this Agreement.
- D. The Contractor warrants that it has no personal or financial interest in the Project other than the fee it is to receive under this Agreement. The Contractor further certifies that it shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance of the Services it is to provide pursuant to this Agreement. Further Contractor agrees and certifies that it does not and will not employ or engage any person with a personal or financial interest in this Agreement.
- E. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes. Further Contractor agrees that the City shall have the right to set off any such debt against compensation awarded for Services under this Agreement.
- F. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting completion as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

- G. The person signing this Agreement on behalf of Contractor represents and warrants that she/he has express authority to sign this Agreement for Contractor and agrees to hold the City harmless for any costs or consequences of the absence of actual authority to sign.

X. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

XI. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XII. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The Contract Administrator shall give Contractor

written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

- D. The provisions of Articles VI and VIII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Contractor's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

XIII. REMEDIES

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
- B. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise.
- C. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.

XIV. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated below or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

LynxDx, Inc.
Steven E. Riggs
333 Jackson Plaza, Ste. 600
Ann Arbor, Michigan, 48103

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
John Fournier
301 E. Huron St.
Ann Arbor, Michigan 48104

With a copy to: The City of Ann Arbor
ATTN: Office of the City Attorney
301 East Huron Street, 3rd Floor
Ann Arbor, Michigan 48104

XV. CHOICE OF LAW AND FORUM

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XVI. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Contractor.

XVII. CONFLICTS OF INTEREST OR REPRESENTATION

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

Contractor agrees to advise the City if Contractor has been or is retained to handle any matter in which its representation is adverse to the City. The City's prospective consent to the Contractor's representation of a client in matters adverse to the City, as identified above, will not apply in any instance where, as the result of Contractor's representation, the Contractor has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to

another client of the Contractor, could be used in any such other matter by the other client to the material disadvantage of the City. Each matter will be reviewed on a case by case basis.

XVIII. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

XIX. EXTENT OF AGREEMENT

This Agreement, together Exhibits A, B, and C, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

XX. ELECTRONIC TRANSACTION

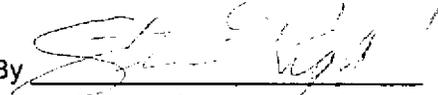
The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement. This Agreement may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

XXI. EFFECTIVE DATE

This Agreement will become effective when all parties have signed it. The Effective Date of this Agreement will be the date this Agreement is signed by the last party to sign it.

[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR CONTRACTOR

By 
Steven E. Riggs Chief Operating Officer

Date: 10-13-2021

FOR THE CITY OF ANN ARBOR

Approved as to substance

 (Doug Forsyth)
Type Name
City Safety Manager

 11/05/2021

MILTON DOHONEY JR., INTERIM CITY ADMINISTRATOR
--

City Administrator
Acting/Interim

Approved as to form and content

 11/05/2021

STEPHEN POSTEMA, CITY ATTORNEY

EXHIBIT A SCOPE OF SERVICES

Statement of Work – Value Service

This Statement of Work (“SOW”) is being issued under the terms of the Master Services Agreement between us (the “Services Agreement”). Capitalized terms used but not defined in this SOW have the meanings given to them in the Services Agreement.

Services & Deliverables Details:

- LynxDx to provide qPCR diagnostic testing of SARS-CoV-2 samples through its lab at 333 Jackson Plaza STE. 600, Ann Arbor, MI 48103 for the City.
- LynxDx will provide the City with SARS-CoV-2 test results which will be provided to the City via a secure portal or other agreed methods (including a potential direct-to-consumer reporting platform).
- LynxDx to provide saliva collection kits (and/or potentially nasal swabs and transport media) to allow City-provided, qualified personnel to collect samples for designated students, faculty, family and/or staff and will coordinate the testing of said persons at mutually agreed upon times and places for the City.

No.	Deliverable	Specifications	Cost
1	Medical Testing	SARS-CoV-2 Test	LynxDx will bill City of Ann Arbor \$50/test
2	Courier Services	Transportation of SARS-CoV-2 Test to Lab	Included in Medical Testing Costs (See 1) City of Ann Arbor Staff Will Utilize the Drive Thru Located at 648 Wagner, AA, MI
3	Portal Setup for Viewing Test Results	Web Portal Set-up	\$5,000 One-time Set-up Fee to Create Custom Portal for City of Ann Arbor

This Statement of Work (“SOW”) is being issued under the terms of the Professional Services Agreement between us (the “Services Agreement”). Capitalized terms used but not defined in this SOW have the meanings given to them in the Services Agreement.

Services & Deliverables Details:

- LynxDx to provide qPCR diagnostic testing of SARS-CoV-2 samples through its lab at 333 Jackson Plaza STE. 600, Ann Arbor, MI 48103 for the City.
- LynxDx will provide the City with SARS-CoV-2 test results which will be provided to the City via a secure portal or other agreed methods (including a potential direct-to-consumer reporting platform).
- LynxDx to provide saliva collection kits (and/or potentially nasal swabs and transport media) to allow City-provided, qualified personnel to collect samples for designated students, faculty, family and/or staff and will coordinate the testing of said persons at mutually agreed upon times and places for the City.

No.	Deliverable	Specifications	Cost
1	Medical Testing	SARS-CoV-2 Test	LynxDx will bill City of Ann Arbor \$50 test
2	Courier Services	Transportation of SARS-CoV-2 Test to Lab	Included in Medical Testing Costs (See 1) City of Ann Arbor Staff Will Utilize the Drive Thru Located at 648 Wagner, AA, MI
3	Portal Setup for Viewing Test Results	Web Portal Set-up	\$5,000 One-time Set-up Fee to Create Custom Portal for City of Ann Arbor

**EXHIBIT B
COMPENSATION**

General

Contractor shall be paid for those Services performed pursuant to this Agreement inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The Compensation Schedule below/attached states nature and amount of compensation the Contractor may charge the City:

Medical Testing

Medical Testing	SARS-CoV-2 Test	LynDx will build City of Ann Arbor \$50/test
Courier Services	Transportation of SARS-CoV-2 Test to Lab	Included in the Medical Testing Costs. City to use Drive Thru at 648 Wagner, Ann Arbor, MI
Portal Setup for Viewing Test Results	Web Portal Set-up	\$5,000 one-time set-up fee to create custom portal for City of Ann Arbor.

**EXHIBIT C
INSURANCE REQUIREMENTS**

From the earlier of the Effective Date or the Commencement Date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

A. The Contractor shall have insurance that meets the following minimum requirements:

1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.

2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 04 13 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000	Per Project General Aggregate
\$1,000,000	Personal and Advertising Injury

4. Motor Vehicle Liability Insurance equivalent to, as a minimum, Insurance Services Office form CA 00 01 10 13 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

- B. Insurance required under A.3 and A.4 above shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City for any insurance listed herein.**
- C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional and unqualified 30-day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number(s); name of insurance company; name(s), email address(es), and address(es) of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions, which may be approved by the City in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. If any of the above coverages expire by their terms during the term of this Agreement, the Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.**



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is made and entered into effective as of April __, 2021 (the "Effective Date") by and between LynxDx, Inc. ("Covered Entity") and City of Ann Arbor, a Michigan municipality ("Business Associate").

RECITALS:

- A. Business Associate is a "business associate" as that term is defined in 45 CFR Parts 160 and 164 ("HIPAA Regulations"), issued under and pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").
- B. In performing agreed upon services or activities, Business Associate will have access to certain patient data of Covered Entity that constitutes "Protected Health Information" or "PHI."
- C. The parties wish to ensure the privacy and security of PHI and to satisfy the requirements of HIPAA, HIPAA Regulations, and Health Information Technology for Economic and Clinical Health Act ("HITECH Act").

THEREFORE, the parties agree as follows:

1. Security Rule. Business Associate shall comply with the applicable requirements of Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule"), 45 CFR 164 subpart C, including without limitation, the policies and procedures and documentation requirements set forth in 45 CFR 164.308, 164.310, 164.312 and 164.316, and with any applicable state law, including, but not limited to, implementing reasonable and appropriate security measures to protect Electronic PHI.

2. Confidentiality Requirements.

(a) Business Associate shall:

(i) use or disclose any PHI solely to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to the Service Agreement as permitted or required under this Agreement, or as Required by Law;

(ii) not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.

(iii) not use or disclose PHI for any purpose or in any manner that would violate the requirements of HIPAA, HIPAA Regulations, if such use or disclosure were made by Covered Entity, except that Business Associate may:

A. Use PHI received from Covered Entity in its capacity as business associate for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities;

B. Disclose PHI received from Covered Entity in its capacity as business associate for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that: (i) the disclosure is Required by Law; or (ii) Business Associate obtains reasonable written assurances from the person to whom the PHI is disclosed that the PHI will remain confidential as provided pursuant to this Agreement and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and a written agreement from such person to

immediately notify Business Associate of any use or disclosure not permitted by this Agreement or any Breach with respect to Unsecured PHI;

C. Provide Data Aggregation services to Covered Entity relating to the Health Care Operations of Covered Entity, as permitted by 45 CFR 164.504(e)(2)(i)(B).

(b) To the extent Business Associate uses one or more Subcontractor that creates, receives, maintains, or transmits PHI or Electronic PHI on behalf of Business Associate, Business Associate and each Subcontractor shall enter into a business associate agreement required by the HIPAA Regulations, containing substantially the same provisions as this Agreement, whereby, at a minimum, each Subcontractor agrees to at least the same restrictions and conditions that apply to Business Associate with respect to such information and agrees to comply with the applicable requirements of the Security Rule, which agreement shall identify Covered Entity as a third party beneficiary with rights of enforcement and indemnification from the Subcontractor in the event of any violation, and which shall require Business Associate to take reasonable steps to cure any material breach or violation of the Subcontractor's obligations, as applicable, and, if such steps were unsuccessful, require Business Associate to terminate the agreement, if feasible. Business Associate shall implement and enforce sanctions against each Subcontractor for breach or violation of such agreements and shall mitigate the effects of any such violation or breach.

(c) Business Associate will use appropriate safeguards and comply, where applicable, with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of PHI other than as permitted in this Agreement. Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to, and disclose PHI when required by, the Secretary to investigate or determine the Covered Entity's or Business Associate's compliance with HIPAA or HIPAA Regulations, in the time and manner requested by the Secretary, and shall immediately notify Covered Entity of any

request it receives from the Secretary that relate or affect, directly or indirectly, this Agreement. Business Associate shall report to Covered Entity any use or disclosure of PHI which is not in compliance with the terms of this Agreement, any Security Incident of which Business Associate becomes aware, including any Breach of Unsecured PHI, and any other unauthorized access or security issue that requires notification under state law, within 10 days after discovery. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI in violation of the requirements of this Agreement, HIPAA or the HIPAA Regulations.

(d) From time to time upon reasonable notice, Covered Entity may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. Business Associate shall promptly remedy any violation of any term of this Agreement and shall certify the same to Covered Entity in writing. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with the obligations of this Agreement, nor does Covered Entity's failure to detect, or to detect but fail to call Business Associate's attention to or require Remediation of any unsatisfactory practice constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights.

3. Availability of PHI. Business Associate shall:

(a) Within 10 days after receiving a written request from Covered Entity, provide access to PHI maintained by Business Associate or its Subcontractor in a Designated Record Set (if applicable) to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524, including compliance with Individual's request to transmit a copy of Individual's PHI to another person. With respect to an Individual's request for an electronic copy of PHI, if Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under 45 CFR 164.524(c)(2)(ii).

(b) Within 15 days after receipt of a written request, make PHI in a Designated Record Set, if applicable, available for amendment and incorporate any amendments to PHI that Covered Entity directs or agrees to pursuant to 45 CFR 164.526, at the request of Covered Entity or an Individual. If any Individual requests an amendment of PHI directly from Business Associate or its Subcontractor, Business Associate must notify Covered Entity in writing within 5 days of the request. Any approval or denial of amendment of PHI maintained by Business Associate or its Subcontractor shall be the responsibility of Covered Entity.

(c) Document such disclosures of PHI and information related to such disclosures, and provide to Covered Entity, within 10 days, information so collected as would be required for, and to permit Covered Entity to respond to, a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528, and as required by Section 13405(c) of HITECH Act as of the date by which

compliance is required under this provision of HITECH Act. In the event that the request for an accounting is delivered directly to Business Associate or its Subcontractor, Business Associate shall within 5 days of the request forward a copy of the request to Covered Entity. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested unless Covered Entity has delegated this responsibility to Business Associate.

(d) To the extent Business Associate is to carry out a Covered Entity's obligation under the Privacy of Individually Identifiable Health Information (the "Privacy Rule"), 45 CFR 164 subpart E, comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of any such obligation.

4. Breach Notification Rule. Business Associate acknowledges the additional privacy, security and notification requirements imposed by the HITECH Act and by 45 CFR 164 subpart D, Notification in the Case of Breach of Unsecured Protected Health Information (the "Breach Notification Rule"), and agrees to comply with these requirements, as may be applicable and as provided in this Agreement.

(a) Specific Obligations of Business Associate. Without limiting the generality of Section 4 above, Business Associate shall:

(i) Notify Covered Entity in writing without unreasonable delay and in no case later than 5 days after discovery of (i) any suspected or actual Breach of Unsecured PHI, including a Breach involving Unsecured PHI of multiple covered entities even if it is unclear if the affected Unsecured PHI relates to Covered Entity and/or other covered entities, and (ii) of any other breach of security, intrusion or unauthorized use or disclosure of data in violation of any applicable federal or state laws or regulations.

(ii) Business Associate shall, in addition to the mitigation procedures described elsewhere in this Agreement, take (i) prompt corrective action to cure any such Breach, or other breach of security, intrusion or unauthorized use or disclosure of data, and (ii) any action pertaining to such Breach, or other breach of security, intrusion or unauthorized use or disclosure required by applicable federal or state laws and regulations.

(iii) At the time of providing notification to Covered Entity under subsection 4(a)(i) above, provide to Covered Entity, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach.

(iv) Provide Covered Entity with any other available information that Covered Entity is required to include in notification to Individual under the Breach Notification Rule at the time of providing notification to Covered Entity under subsection 4(a)(i) above or promptly and without unreasonable delay thereafter as information becomes available, even if it becomes available after the required notifications have been sent to the affected Individuals or after the 15-day period specified above has elapsed.

(v) Comply with the Law Enforcement Delay as required by 45 CFR 164.412 to the same extent as would be applicable to Covered Entity, if a request is made to Business Associate.

(b) **Breach Treated as Discovered.** A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, by exercising reasonable diligence (that is business care and prudence expected from a person seeking to satisfy a legal requirement under similar circumstances), would have been known to Business Associate or to any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate or is acting under Business Associate's direction or control.

(c) **Notification of Individual.** The parties shall cooperate in determining which entity is in the best position to provide notice to the Individual and will use their best efforts to ensure the Individual does not receive notifications from both Covered Entity and Business Associate about the same Breach.

5. **Prohibited Uses and Disclosures.** Business Associate shall not:

(a) Make or cause to be made any Marketing communication or Fundraising communication that involves or is based on, in whole or in part, any PHI, without a prior written consent of Covered Entity;

(b) Disclose PHI to a health plan for Payment or Health Care Operations purposes which is not otherwise Required by Law, if (i) Covered Entity has advised Business Associate that the Individual has requested this special restriction or the Individual has notified Business Associate of this restriction, and (ii) the PHI pertains solely to a health care item or service for which the Individual, or person on behalf of the Individual other than the health plan, has paid Covered Entity out of pocket in full; or

(c) Directly or indirectly receive remuneration in exchange for PHI created, received, maintained or transmitted as prohibited by 45 CFR 164.502(a)(5)(ii); provided, however, that this shall not affect payment by Covered Entity to Business Associate for services under the Service Agreement or other disclosures that do not constitute a Sale of PHI under the HIPAA Regulations provided that Business Associate may not de-identify PHI in and may not use or disclose such de-identified data.

6. **Personal Health Records.** If Business Associate provides personal health records ("PHRs") to Covered Entity's patients and also provides PHRs directly to the public and a Breach of its records occurs, Business Associate shall provide the same Breach notice to all its PHR customers as required by the Breach Notification Rule and other laws and regulations, including notice to Individuals on behalf of Covered Entity.

7. **Minimum Necessary.** Business Associate and its Subcontractors shall request, use and disclose only a Limited Data Set or, if needed, the minimum amount of PHI necessary to accomplish the purpose of the request, use or

disclosure, and any such use, disclosure or request shall comply with the Covered Entity's minimum necessary policies and procedures and with Secretary's guidance on the minimum necessary standard in accordance with section 13405(b) of the HITECH Act as of its effective date.

8. **Transactions.** If Business Associate conducts electronic Transactions on behalf of Covered Entity for which the U.S. Department of Health and Human Services has established standards, Business Associate shall comply, and shall require any Subcontractor involved with the conduct of such Transactions to comply, with the applicable requirements of the Electronic Transactions Rule. Business Associate will also comply with the other requirements of 45 CFR Part 162, if and to the extent applicable.

9. **Termination.**

(a) If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement, HIPAA, HITECH Act or the HIPAA Regulations, and, where practicable, notifies Business Associate of such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not violate the cited term of this Agreement, HIPAA, HITECH Act or the HIPAA Regulations within a reasonable period of time given the specific circumstances, but in any event, before the threatened violation is to occur, then Covered Entity may terminate this Agreement immediately.

(b) Upon Covered Entity's obtaining knowledge of a pattern of activity or practice by Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, Covered Entity shall:

(i) provide an opportunity for Business Associate to cure the breach or end the violation within 10 days of receiving notice of the breach and/or violation, and, if such action does not successfully bring about cure of the breach or an end to the violation, Covered Entity shall terminate this Agreement and the Service Agreement, if feasible; or

(ii) Upon notice, immediately terminate this Agreement and the Service Agreement, if, in Covered Entity's reasonable discretion, cure of the breach or causing the violation to end is not reasonably possible.

(c) This Agreement shall terminate upon any termination or expiration of the Service Agreement or any other business relationship between the parties whereby Business Associate is a "business associate" under the HIPAA Regulations, whichever is later.

(d) At expiration or termination of this Agreement for any reason, if feasible, Business Associate must return all PHI received from, or created or received by Business Associate on behalf of, Covered Entity that Business Associate still maintains in any form and retain no copies of such information or, to the extent authorized by Covered Entity, destroy such PHI. If Covered Entity elects destruction, Business Associate shall certify in writing that the PHI has been destroyed and shall describe the manner in which it was destroyed. If Business Associate in good faith

determines that such return or destruction is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of the PHI not feasible and upon mutual agreement of the parties that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible for so long as Business Associate maintains such PHI. This provision shall also apply to PHI that is in the possession or control of Subcontractors of Business Associate.

10. Obligations of Covered Entity. Covered Entity agrees:

(e) To inform Business Associate of any changes in the form of Notice of Privacy Practices that Covered Entity provides to Individuals, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(f) To inform Business Associate of any changes in, or withdrawal of, the consent or authorization provided to Covered Entity, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(g) To notify Business Associate of any other arrangements permitted or required of Covered Entity, such as any restriction to the use or disclosure of PHI that Covered Entity has agreed to, that may affect Business Associate's use or disclosure of PHI.

(h) Not to request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA, HITECH Act, HIPAA Regulations, or this Agreement, if done by Covered Entity.

11. Construction. This Agreement shall be construed as broadly as necessary to implement and comply with HITECH Act, HIPAA and HIPAA Regulations, and any ambiguity shall be resolved to permit Covered Entity to comply with the HITECH Act, HIPAA and HIPAA Regulations. Except as otherwise defined herein, all capitalized terms shall have the meanings set forth in the HIPAA Regulations. Any references to HIPAA, HIPAA Regulations, HITECH Act, Privacy Rule, Security Rule and Electronic Transactions Rule shall deem to include any amendments to them from time to time. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Regulations, the HIPAA Regulations shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Regulations, but are not prohibited by HIPAA Regulations, the provisions of this Agreement shall control. In the event Service Agreement contains provisions relating to the use or disclosure of PHI which are more restrictive than the provisions of this Agreement, the more restrictive provisions will control.

12. Indemnification. Business Associate shall indemnify, defend and hold Covered Entity, its shareholders, directors, members, managers, officers and employees harmless from

and against any and all loss, damage, expense or cost (including attorney's fees and legal expenses attendant thereto) arising from or in connection with Business Associate's or any of its Subcontractors or employees failure to comply with any of its obligations under the HITECH Act, HIPAA or the HIPAA Regulations, or its obligations, representations or warranties under this Agreement, or any action or omission (including negligence) of Business Associate, any Subcontractor of Business Associate, or any person or entity acting for or on behalf of Business Associate or at Business Associate's direction.

13. Independent Contractor. The relationship between the parties is that of independent contractor, and nothing contained in this Agreement or Service Agreement shall be construed to make either party an agent or employee of the other party or to create any joint venture, partnership, or other association between the parties other than that of independent contractor. Except as provided herein, Covered Entity shall not have any supervision, direction, or control over the means or methods of the performance of Business Associate's services or obligations hereunder.

14. Miscellaneous. This Agreement intends to establish the minimum requirements regarding Business Associate's use and disclosure of PHI. The obligations of Business Associate shall survive the expiration or termination of this Agreement and/or the Service Agreement for any reason, and shall continue to bind Business Associate and its successors, assigns and Subcontractors as set forth herein.

This Agreement may be amended or modified only in a writing signed by the parties, and the parties shall amend the Agreement as may be necessary to comply with HIPAA, HITECH Act, and HIPAA Regulations. If either party does not agree, during a 30 day period, to so amend this Agreement, then either party may terminate this Agreement upon written notice to the other party.

Business Associate may not assign any rights or obligations hereunder without the prior written consent of Covered Entity. No change, waiver or discharge of any liability or obligation hereunder on any occasion shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

COVERED ENTITY:


Name: Steven Riggs
Title: COO

BUSINESS ASSOCIATE:

Name:
Title: