

CUYAHOGA COUNTY DEPARTMENT OF WORKFORCE DEVELOPMENT CONTRACT

THIS CONTRACT made and entered into this ____ day of _____, 2011 by and between the County of Cuyahoga, Ohio (the "County") on behalf of the City of Cleveland/Cuyahoga County Department of Workforce Development (hereinafter called "DEPARTMENT") and **Esperanza, Incorporated**, a corporation not-for-profit, with principal offices located at 4104 West 25th St.; Cleveland, Oh. 44109 (the "PROVIDER").

WITNESSETH:

WHEREAS, the United States Congress has established and the President has signed into law, the Workforce Investment Act of 1998 (Public Law 105-220), hereinafter referred to as "The Act"; and has charged the Governor of the State of Ohio with the establishment of Local Service Areas for the express purpose of implementing The Act; and

WHEREAS, the Governor of the State of Ohio has created the Ohio Department of Job and Family Services (ODJFS) to administer The Act in the State of Ohio through its Division of Workforce Development; and

WHEREAS, the Mayor of the City of Cleveland and the County, as the Chief Local Elected Officials representing Cuyahoga County, have determined and formed a Local Service Area (LSA) and appointed members to a Workforce Investment Board for the purpose of conducting programs and providing services under The Act; and

WHEREAS, the Ohio Department of Job and Family Services (ODJFS) has officially certified the City of Cleveland/Cuyahoga County Workforce Investment Board for Local Service Area #3 effective July 1, 2009; and

WHEREAS, the City of Cleveland/Cuyahoga County Workforce Investment Board (WIB), in partnership with the County, has identified the City of Cleveland/Cuyahoga County Department of Workforce Development (the "DEPARTMENT") as Grant Recipient and Administrative Entity for programs under The Act in Cuyahoga County; and

WHEREAS, the City of Cleveland/Cuyahoga County Department of Workforce Development released a Request for Proposals for the purpose of providing year round education and occupational training for eligible disadvantaged youth; and

WHEREAS, the City of Cleveland/Cuyahoga County Workforce Investment Board approved the PROVIDER's proposal.

WHEREAS, the County is desirous of having the PROVIDER, provide various employment and training services under the Act and the PROVIDER is willing to provide such services.

NOW, THEREFORE, IT IS AGREED TO, by and between the parties hereto as follows:

Section 1: CONTRACT PERIOD AND AMOUNTS:

The PROVIDER will provide the services set forth in Attachment A of Exhibit I, for the period September 1, 2011 and end June 30, 2012. Total payments for this period will not exceed \$175,000.00 and will be paid in accordance with the terms and conditions of EXHIBIT II, entitled Budget hereof. EXHIBITS I and II, are by these references incorporated herein and made a part hereof as if fully rewritten.

Section 2: NULLIFICATION OF PRELIMINARY NEGOTIATIONS:

This Contract is the agreement between the parties as it currently exists; the parties agree and distinctly understand that all previous communications and negotiations between the parties, either verbal or written, not contained herein are withdrawn and annulled.

Section 3: AVAILABILITY OF FUNDS:

This Contract is conditioned upon the availability of federal, state or local funds that are appropriated or allotted for payment(s) of this Contract.

Section 4: QUALIFYING LEGISLATION:

This Contract is subject to all the language of the ACT and the terms and conditions of Title 20, Code of Federal Regulations, Parts 660 through 671 and including Part 652 (hereinafter referred to as CFR) and any amendments or revisions thereto, which by this reference is incorporated herein as if fully rewritten. In the event of any conflict between the terms and conditions of this Contract, the ACT and said Parts 660 through 671 of Title 20 CFR, including Part 652, the terms of the ACT and the said CFR shall prevail and govern the performance of the parties hereunder.

Section 5: CONTRACTING AUTHORITY:

The PROVIDER herein shall abide by all the terms and conditions of the aforementioned Workforce Investment Act grant by and between the LSA Grant Recipient, or its designated agent, and ODJFS, as said grant applies to the program services herein, which grant, is by this reference incorporated herein as if fully rewritten, and, further, that it will abide by all subsequently published revisions, modifications thereto, immediately after receipt of written notice thereof from the LSA Grant Recipient, or its designated agent, herein.

Section 6: OMB CIRCULARS:

The PROVIDER, as a sub-recipient of WIA funds, agrees to adhere to the requirements placed on the LSA Grant Recipient, where applicable to the PROVIDER, pursuant to Office of Budget and Management (OBM) Circular Numbers A-87, A-122, A-21 and A-133 and the "Common Rule for Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments" (29 CFR Part 97), as they relate to the application, acceptance and use of federal funds which are incorporated herein by this reference as if fully rewritten. The PROVIDER shall also adhere to any and all amendments or modifications thereto where such administrative requirements and procedures have been specifically superseded by ODJFS Policy, the ACT and WIA Regulations.

Section 7: PAYMENT AND PROCEDURE:

- A. The PROVIDER shall submit invoices with accompanying documentation as provided in EXHIBIT II. The PROVIDER will record all costs incurred in the discharge of this Contract, as accrued, and report these costs no later than the close of business on the fifteenth (15th) calendar day of the following month, all in the manner specified by the WIA Grant Recipient and in conformance with applicable Federal and/or State WIA requirements.
- B. The PROVIDER assures, that if it is a public agency or non-profit corporation, that it will not charge more than 100% of its actual cost of doing business to any one funding source. The PROVIDER further assures that where multiple funding sources are involved, all planned and actual charges will be fully disclosed to said funding sources and collectively, the planned and actual costs will in no event exceed 100% of the actual cost of doing business or implementing and administering any program. The PROVIDER finally assures that no individual's compensation will be charged at more than 100% of said compensation regardless of the funding source(s) involved.
- C. The PROVIDER agrees to adhere to all reporting requirements, fiscal and operational, as required by the WIA Grant Recipient for the effective administration of WIA, which shall include completion of the reports identified as EXHIBITS IV and V, which are attached hereto and made a part hereof as if fully rewritten. The PROVIDER shall submit these reports no later than the close of business on the fifteenth (15th) calendar day of the month following the month for which activity is reported upon.

Section 8: REPORTING:

The PROVIDER agrees to adhere to all reporting requirements, fiscal and operational, as required by the WIA Grant Recipient.

Section 9: INDEMNITY:

The PROVIDER will protect and save the COUNTY and the DEPARTMENT, harmless from any and all loss, claims, expenses, actions, causes of actions, costs damages and obligations, final or otherwise, arising from any and all acts of the EMPLOYER, its agents, employees, licenses, clients hereunder, or invitees that result in injury to persons, damage to property or loss, either directly or indirectly, to the COUNTY and the DEPARTMENT, arising from the performance of this Agreement, as those injuries, damages or losses relate to any person, corporation, partnership or any other entity..

Section 10: RELATIONSHIP:

Nothing in this contract is intended to, or shall be deemed to constitute a partnership, association or joint venture with the PROVIDER in the execution of the provisions of this Contract. The PROVIDER shall at all times have the status of an independent PROVIDER without the right or authority to impose tort, contractual or other liability on the County.

Section 11: DISPUTES:

Disputes arising under this Contract, between the WIA Administrative Entity and the PROVIDER, the PROVIDER and WIA participants, as well as all other disputes between any authorized parties, shall be resolved as required by Sections 667.600 through 667.860 of the WIA federal regulations, pursuant to the procedures established in EXHIBIT III hereof which is attached hereto and incorporated herein as if fully rewritten. In any event, performance under this Contract shall be continued pending resolution of any disputes.

Section 12: TERMINATION/ CANCELLATION OF CONTRACT:

- A. Termination for Convenience: That the WIA Administrative Entity may, by written notice to the PROVIDER, terminate the right of the PROVIDER to proceed under this Contract if it is found, after notice and hearing by the WIA Administrative Entity, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the PROVIDER, or any agent or representative thereof, to any officer or employee of the WIA Administrative Entity or with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determination with respect to the performance of such contract, provided that the existence of the facts upon which the WIA Administrative Entity makes such finding shall be in issue and may be reviewed by the appropriate officials of the State of Ohio; and
- B. That the rights and remedies of the WIA Administrative Entity provided in these clauses shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract; and
- C. The WIA Administrative Entity, by written notice, may terminate this Contract, in whole or in part, when the County determines that it is in the best interest of the WIA Administrative Entity to do so. In such event, the PROVIDER shall receive as full payment of performance hereunder all payments earned in accordance with Section # 7 prior to such termination. In no event, however, shall said payment exceed the obligated amount for said services terminated.
- D. Cancellation: That the WIA Administrative Entity shall cancel this Contract for noncompliance with any requirement of WIA, the regulations promulgated under the Act, and any other applicable law.
- E. Failure to Perform: That if the PROVIDER fails to perform under this Contract or fails to make sufficient progress so as to endanger performance, the WIA Administrative Entity may cancel this Contract, in whole or in part, upon written notice to the PROVIDER as a result of its failure to remedy such conditions within ten (10) calendar days of receipt of such notice. In the event of such cancellation, PROVIDER will be paid to the date of cancellation for all such work as has been properly performed hereunder. Should it be finally determined that the PROVIDER has, in fact, performed properly, the cancellation will be treated as a termination for convenience.

Section 13: SEVERABILITY:

If any term or provision of this Contract or the application thereof to any person or circumstances shall, to any extent be held invalid or unenforceable, the remainder of this Contract or the application of such

term(s) or provision(s) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

Section 14: REMEDIES:

The rights and remedies of the WIA Administrative Entity provided in these clauses shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

Section 15: MODIFICATION OF THE CONTRACT:

This Contract may be modified or amended at any time upon the agreement of both parties.

Section 16: METHOD OF COMMUNICATING MODIFICATION:

No letter, facsimile or communication passing between the parties covering any matter during this Contract's period of performance, will be a part of this Contract; nor will any communication have the effect of modifying or adding to this Contract unless it distinctly stated in the letter, facsimile or communication that it constitutes a part of this Contract and unless it is signed by the Director of the City of Cleveland/Cuyahoga County Department of Workforce Development or another authorized County signatory, and the PROVIDER's authorized signatory.

Section 17: PUBLICITY:

The PROVIDER will serve a copy of any news release, advertisement, or other public communication regarding the program (or any other service described herein) on the designated representative of the WIA no less than 72 hours before said release or other communication is issued to the news and advertising media or the public. Furthermore, the PROVIDER will notify the designated representative of the WIA Administrative Entity immediately when any representative of the print or electronic news media contact the PROVIDER concerning news coverage of the program (or other services) named herein. Unless otherwise agreed to by the WIA'S designated representative, all public communications issued by the PROVIDER regarding the program or services named herein must contain the disclaimer: funding for this program (service) was provided by the City of Cleveland/Cuyahoga County Department of Workforce Development through the Workforce Investment Act.

Section 18: RIGHTS PROTECTION LEGISLATION:

The PROVIDER will observe and follow the ensuing Equal Employment Opportunity (EEO) and Affirmative Action Plan (AAP) requirements:

- A. PROVIDER will comply with the provisions of Title VI and VII of the Civil Rights Act (42 USC 2000d and 2000e), the Age Discrimination in Employment Act (29 USC 620 *et seq.*), the Equal Pay Act (29 USC 206 (d)), the Rehabilitation Act (29 USC 794), Title IX of the Education Amendment Act of 1972 (20 USC 1618), the Age Discrimination Act (42 USC 6101), the Americans with Disabilities Act (42 USC 12101 *et seq.*) and other applicable nondiscrimination regulations (29 CFR Part 37). The PROVIDER assures that no portion of its WIA program will in any way

discriminate against, deny benefits to, deny employment to, or exclude from participation, any person on the grounds of race, color, national origin, religion, age, sex, handicap, or political affiliation or belief. Efforts shall be made to make programs and facilities accessible to eligible qualified people with disabilities; and

- B. PROVIDER will develop and implement an acceptable AAP consistent with the requirements of ODJFS which are attached hereto and made a part hereof as if fully rewritten and is identified as EXHIBIT III; and
- C. PROVIDER covenants that this Contract is subject to the Equal Employment Opportunity Resolution No. 1985, adopted by Cuyahoga County on July 24, 1975, and the rules and regulations issued thereunder, which resolution and rules and regulations are incorporated by this reference as if fully rewritten.

Section 19: SUBCONTRACTS:

Unless otherwise provided herein, no subcontracts are permitted under the terms of this Contract without the specific written approval of the WIA Administrative Entity. In the event that Sub-contract(s) are permitted, the sub-contractor(s) are subject to same terms, conditions and covenants contained herein.

Section 20: INSURANCE:

The PROVIDER shall take out and maintain during the life of this Contract such broad form contractual and comprehensive public liability insurance as shall protect it, the WIA Grant Recipient and Administrative Entity, and any subcontractors performing work covered by this Contract from claims for damages from personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Contract whether such operation be by the PROVIDER, or by any subcontractor or by anyone directly or indirectly employed by either one of them. The policy or policies required hereunder shall name the WIA Grant Recipient and Administrative Entity, the County of Cuyahoga, the Ohio Department of Job and Family Services (ODJFS) and the Department of Labor (DOL) as additional insured. The PROVIDER agrees that prior to cancellation or reduction of the insurance afforded by this policy, with respect to the Contract involved, written notice shall be sent by certified mail to the Director of Workforce Development. The additional insurance coverage provided WIA Grant Recipient, Administrative Entity, the County of Cuyahoga, ODJFS and DOL. under PROVIDER'S insurance policy or policies shall be primary with respect to the PROVIDER'S premises and operations, notwithstanding other insurance covering the WIA Grant Recipient, Administrative Entity, the County of Cuyahoga, ODJFS and DOL. The limits of such insurance policies shall be an amount not less than \$100,000.00 for injuries, including accidental death, to one person and not less than \$300,000.00 for injuries or loss of life to more than one person as a result of one accident and \$25,000.00 for property damage.

Section 21: RECORD RETENTION:

In accordance with 29 CFR 97.42 *et seq.*, the PROVIDER herein shall maintain a complete file (hard copy and electronic) of all records, communications, and other written materials which relate to the delivery of services indicated in this Contract and that upon request of the WIA Grant Recipient or Administrative Entity, shall make such records available, and the PROVIDER shall maintain said files

for a period of three (3) years after the termination date of this Contract, said period to be automatically extended if the D.O.L., ODJFS, the WIA Grant Recipient or Administrative Entity's audit findings pursuant to this Contract remain unresolved.

Section 22: PROPERTY LEASE:

The PROVIDER shall not, while using federal funds in the performance of this Contract, lease either real or personal property under terms providing, among other things, for the option to apply rent in whole or in part toward the purchase price of the property being leased, without prior written consent of the WIA Administrative Entity, nor shall the PROVIDER lease or purchase real or personal property contrary to provisions dealing with said subject matter as stated in EXHIBIT I hereof.

Section 23: FISCAL COMPLIANCE:

All fiscal records, pursuant to this Contract, shall be kept on a line item basis and in a manner that is consistent with generally accepted accounting practices. Fiscal accounts shall be maintained on an accrual basis. That 20 CFR Section 667 will be adhered to and that the PROVIDER shall not commingle the funds received pursuant to this Contract with any other funds and shall establish and maintain separate records for the management of the funds pursuant to this Contract.

Section 24: MONITORING:

The WIA Grant Recipient, the County, Youth Council, ODJFS, D.O.L. and any other federal or state agency, as legally authorized, shall have the right, pursuant to 20 CFR 667.400, to monitor all activities under this Contract for which funds have been provided. The monitoring function may be implemented through the use of internal evaluation procedures, the examination of program data, special analysis, on-site checking, and any other procedure the WIA Administrative Entity and the above-mentioned agencies deem necessary and appropriate. The Department reserves the right to conduct both scheduled and unannounced site visits. The PROVIDER agrees to respond to site visit scheduling with seven days of request.

Section 25: CLOSE-OUT AND AUDIT:

The PROVIDER shall submit to the WIA Administrative Entity, a final close-out report not more than 60 days after the end of the funding cycle, containing a complete financial reconciliation and a full program evaluation of activities during the contract period. An audit is required if an organization expends \$500,000.00 or more in federal funds; the PROVIDER shall submit to the WIA Administrative Entity, an Annual Compliance with Federal OBM Circular A-133 if annual expenditures exceed \$500,000.00.

Section 26: CONFIDENTIALITY:

The PROVIDER agrees to comply with all federal and state laws applicable to the City of Cleveland/Cuyahoga County Department of Workforce Development and/or consumers of City of Cleveland/Cuyahoga County Department of Workforce Development funded services concerning the confidentiality of the City/County consumers. The PROVIDER understands that Ohio law prohibits anyone from soliciting, disclosing, receiving, using, or knowingly permitting, or participating in the use of any information regarding a public assistance recipient for any purpose not directly connected

with the administration of a public assistance program. R.C. 5101.27(A). See also Ohio Administrative Code 5101:1-1-03. Under R.C. 5101.00(B), whoever violates R.C. 5101.27(A) is guilty of a misdemeanor of the first degree.

Section 27: PUBLIC RECORDS:

Subject to Section 26, this contract is a matter of public record under the laws of the State of Ohio. Upon a request made pursuant to Ohio law, the PROVIDER agrees to notify the Director of Workforce Development, before making copies of this Contract available to any requesting party.

Section 28: POLITICAL ACTIVITY PROHIBITION:

No funds hereunder shall be used for any partisan or nonpartisan political activity or to further the election or defeat of any candidate for public office, nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to this contract with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group in an election for public or party office; (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or (3) any voter registration activity, and other wise comply with the requirements of 5 USC 1501-1508, which are incorporated herein by this reference as if fully rewritten.

Section 29: SECTARIAN ACTIVITIES:

The PROVIDER assures that participants served under this Contract shall not be employed in the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place of religious worship.

Section 30: LOBBYING PROHIBITION:

The PROVIDER assures and certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the PROVIDER, to any person for the purpose of influencing or attempting to influence an officer or employee of an agency, a Member of Congress, or an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal Grant, the making of any Federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment or modification of any Federal contract, loan or cooperative contract.

Section 31: DEBARMENT AND SUSPENSION:

The PROVIDER will, upon notification by any Federal, State or Local government agency, immediately notify the WIA Administrative Entity of any debarment or suspension of the PROVIDER being imposed or contemplated by said Federal, State or Local government agency. The PROVIDER will also notify the WIA Administrative Entity if it is currently under debarment or suspension by any Federal, State or Local government agency; and that the PROVIDER has complied with all Federal State and Local policies required for designation as a "Drug-Free Workplace."

Section 32: CONFLICT OF INTEREST:

No officer, employee or agent of the WIA Grant Recipient or Administrative Entity, the Workforce Investment Board (WIB) and the PROVIDER who exercises any functions or responsibilities in connection with this Contract, shall have any personal financial interest, direct or indirect, in this Contract. In the event that a conflict of interest should arise, the PROVIDER shall report such conflict to the County immediately and the County may terminate the contract in accord with Section 12 or any other relevant provision of this Contract.

Section 33: BUY AMERICAN ACT:

Pursuant to Section 505 of the ACT, the PROVIDER acknowledges the intent of the Congress of the United States that only American-made equipment and products should be purchased with funds provided through this Contract. Therefore, in expending the funds provided hereunder, the PROVIDER agrees to comply with 41 U.S.C. # 10a - 10d, known as the "Buy American Act."

Section 34: PATENT SAFEGUARDS:

The PROVIDER shall indemnify the WIA Grant Recipient and Administrative Entity, the City of Cleveland/Cuyahoga County Department of Workforce Development, and the County, its officers, agents and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 USC 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification or repair of real property under this Contract.

Section 35: COPYRIGHT PROTECTION:

The PROVIDER shall report to the WIA Administrative Entity, promptly and in writing, each notice or claim of patent or copyright infringement based on the performance of this Contract. The PROVIDER further agrees not to remove any copyright notices placed on data and to include such notices on all reproductions of the data.

Section 36: VESTED POWERS:

All powers not explicitly vested in the PROVIDER by the terms of this Contract shall remain with the WIA Administrative Entity.

Section 37: ELECTRONIC SIGNATURE:

By entering into this CONTRACT, PROVIDER agrees to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by the county to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. PROVIDER also agrees to be bound by the provisions of chapters 304 and 1306 of the Ohio revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

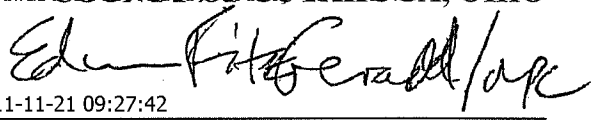
IN WITNESS WHEREOF, the parties have executed this Contract as of the first date below written.

ESPERANZA, INCORPORATED

BY: 

DATE: _____ **8/31/11**

COUNTY OF GUYAHOCA, OHIO
Edward FitzGerald, County Executive

BY: 
_____ **Edward FitzGerald, County Executive**
2011-11-21 09:27:42

DATE: _____