

CONTRACT

THIS CONTRACT, is made and entered into this 15th day of August, 2012, by and between Cuyahoga County, Ohio (the "COUNTY"), and Kmart Corporation, a Michigan corporation, with its principal address at 3333 Beverly Road, Hoffman Estates, Illinois 60179, and with a retail store at 12501 Rockside Road, Garfield Heights, Ohio 44125 (hereinafter "Vendor") (the COUNTY and Vendor may be referred to herein individually as a "Party" and collectively as "Parties").

WITNESSETH:

WHEREAS, The COUNTY has previously issued a Request for Proposal #21629 seeking proposals for Housing Items for Aging Out Youth; and

WHEREAS, Vendor submitted a BID in response to the RFP and the COUNTY selected the Vendor for the provision of Housing Items for Aging Out Youth; and

WHEREAS, the COUNTY desires to purchase the goods and services described in the RFP from Vendor, and Vendor is willing to provide such goods and services to the COUNTY all upon the terms and conditions set forth herein as well as the terms of the RFP,

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the COUNTY and Vendor hereby agree as follows:

ARTICLE I – DEFINITIONS

1.1 Definitions. Capitalized terms used in this Contract shall have the meanings as set forth in this Article I unless a different meaning is specifically provided or the context requires otherwise:

- (a) "Contract" means this Contract and all Exhibits and other documents attached hereto, and includes the RFP referenced herein.
- (b) "Deliverables" means any products, services, or maintenance to be provided by Vendor and delivered to COUNTY as described in the RFP and BID.
- (c) Context. As the context of this Contract may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word "including" or any variation thereof is used herein, it shall mean "including, without limitation," and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or". The words "herein," "hereof," "hereunder," "hereby," "this Contract" and other similar references shall be construed to mean and include this Contract and all amendments hereof and supplements hereto unless the context clearly indicates or requires otherwise.

End of Article I.

ARTICLE II – TERM, STATEMENT OF WORK, AGREEMENT

2.1 Term. The term of this Contract shall commence on October 1, 2012 (the "Effective Date") and, unless extended or earlier terminated in accordance with the provisions of this Contract, and shall terminate December 31, 2012 (the "Term").

2.2 Statement of Work. By execution of this Contract, Vendor accepts and agrees to the terms and conditions set forth herein. During the Term, Vendor shall provide the products described in the BID, in accordance with said terms and conditions. In the event of a conflict between any provision of this Contract and any provision in the BID, the terms and conditions of this Contract, shall control; in the event of a conflict between any provision of the RFP and any provision of the BID, the provisions of the RFP shall control.

2.3 Products – Generally

2.3.1 Vendor shall provide the items, as set forth in the RFP and Bid documents. The parties agree that the COUNTY wishes to expend no more than \$50,000.00 and therefore, based upon the per set price of \$501.76 for the products, the quantity of sets of products provided by this contract will be 99.

2.3.2 The items should be available for distribution within 90 days of COUNTY's notification to Vendor.

2.3.3 Vendor agrees not to charge a restocking fee or other charges or fees for returns of merchandise.

2.4 Subcontractors. Vendor shall not engage any subcontractor in performing the work required under this Contract absent the written approval of the COUNTY.

End of Article II.

ARTICLE III – COMPENSATION, PAYMENT AND INVOICING

3.1. Compensation. Compensation paid by COUNTY to Vendor under this Contract shall not exceed \$50,000.00.

3.2. Payment. In consideration of Vendor providing products in accordance with this Contract, and except as otherwise noted herein, the COUNTY, during the Term, agrees to pay Vendor in accordance with Article III.

3.3. Invoicing. Vendor shall invoice COUNTY by providing a copy of the voucher and sales receipt. Any Invoice that does not include all information required may be rejected by COUNTY, in its sole discretion.

3.3.1. Vendor shall submit original invoice(s) to the following address:
Cuyahoga County Division of Children and Family Services
Payment Processing Unit
3955 Euclid Avenue
Cleveland, OH 44115

The COUNTY will endeavor to pay an Invoice within 30 days of approval of same by the COUNTY Project manager; provided, however, payment of any such invoice to Vendor must be made within 60 days of Vendor's submittal of such Invoice and all documentation required by COUNTY to the aforementioned address in this Section.

3.4. All-Inclusive Price. The prices set forth in the invoice are inclusive of all charges for delivery of products, services, and maintenance described in the Bid. Vendor agrees to deliver the products listed in the RFP to an address designated by COUNTY. The COUNTY

anticipates that the delivery address will be 3955 Euclid Avenue, Cleveland Ohio. The Vendor will deliver the products to an area designated by the COUNTY within the building; mere delivery to a loading dock is not acceptable. The delivery of all products will occur, unless Vendor is unable to provide a particular product(s) at the time of the delivery. If that occurs, Vendor will deliver, under the same delivery terms, the omitted or back-ordered products.

3.5. All invoices must be received by the COUNTY within 30 days after delivery of the goods or services. The COUNTY will deem any invoices received after 30 days as untimely and shall not be paid.

3.6. Audit, Records Retention. Vendor agrees to make all pertinent contractual books and records and other documents pertaining to this Contract available to the COUNTY and its designated agents for purpose of audit and examination upon reasonable written request to Vendor (at least 24 hours advance notice) during the term of this Contract and for a period of five (5) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should Vendor be notified that an audit has been commenced pursuant to Ohio Revised Code §117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.

End of Article III.

ARTICLE IV – INDEMNITIES, LIABILITIES, INSURANCE

4.1. Indemnification.

4.1.1. Vendor shall indemnify and hold harmless and, at COUNTY's option, defend or pay for an attorney selected by COUNTY to defend, COUNTY, its employees, officers, servants, and agents, from and against any and all damage, liability, claims, losses, actions, judgments, expenditures and expenses, based upon or arising out of injuries, to include death resulting therefrom, or damages to persons or property (including loss of data) caused by or sustained in connection with the performance of this Agreement arising from the negligent or wrongful acts, errors or omissions of Vendor, its employees, agents, servants, or officers. The provisions of this Section shall survive the termination or expiration of this Agreement. To the extent considered necessary by the COUNTY, any sums due Vendor under this Agreement may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved.

4.1.2. COUNTY shall notify Vendor as soon as reasonably possible if it becomes aware of any claim for which it may be entitled to indemnification under this Article IV, and if COUNTY chooses to have Vendor defend, COUNTY hereby gives Vendor the necessary authority, and shall provide such information and assistance as is reasonably necessary (at Vendor's expense with respect to reasonable out-of-pocket costs and reasonable attorney's fees) to enable Vendor to defend, compromise or settle such claim; provided that, Vendor will consult and share all relevant information with COUNTY in connection with all stages of such defense, compromise or settlement.

End of Article IV.

ARTICLE V – DEFAULT, LIQUIDATED DAMAGES

5.1. Default. The COUNTY may declare Vendor in default under this Contract, in whole or in part, if Vendor materially fails to fulfill any of its obligations and responsibilities hereunder, and Vendor is unable to cure such failure within five Business Days, or such longer

period of time as may be specified in writing by the COUNTY. In the event Vendor materially fails to perform its obligations and responsibilities hereunder, the COUNTY shall so notify Vendor in writing of the failure and of the time period that has been established to cure such failure (the "Default Notice").

5.2. Termination for Financial Instability. In the event that Vendor becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against Vendor of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the COUNTY may, at its option, immediately terminate this Contract in accordance with this Article V.

5.3. Either party may terminate this Contract, with or without cause, by providing the other party thirty (30) days written notice sent to the persons identified in section 6.2. The written notice must be sent by a form of hand delivery or certified mail, return receipt requested or overnight courier.

End of Article V.

ARTICLE VI - MISCELLANEOUS

6.1. Relationship of Parties. Vendor is performing pursuant to this Contract only as an independent contractor. Vendor has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Contract, except as otherwise agreed upon by the parties. Nothing set forth in this Contract shall be construed to create the relationship of principal and agent between Vendor and the COUNTY. Neither party shall act or attempt to act or represent itself, directly or by implication, as an agent of the other party or its affiliates or in any manner assume or create any obligation on behalf of, or in the name of the other party or its affiliates.

6.2. Notices. Wherever a Party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed delivered when delivered personally or, if delivered via certified mail with return receipt requested or via overnight courier with signature required, when the return receipt is either signed or refused, and addressed as follows:

In the case of the COUNTY:

Cuyahoga County Division of Children and Family Services
Attn: Deputy Administrator -Administrative Services
3955 Euclid Avenue
Cleveland, Ohio

In the case of Vendor:

Kmart Corporation
c/o Sears Holding Management Corporation
3333 Beverly Road, B6-350B
Hoffman Estates, IL 60179
Attn: William T. McCormick, Senior Counsel

6.3. Intentionally omitted.

6.4. Severability. If any section, provision in this Contract or any portion thereof shall be invalid or unenforceable for any reason, such invalidity or lack of enforceability shall not affect the validity or enforceability of any other section, provision or portion thereof. To the

extent an interpretation of a section, provision or a portion thereof can be made which will make it valid or enforceable; the Parties agree that the interpretation making it valid or enforceable should be chosen.

6.5. Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

6.6. Incorporation by Reference. All Exhibits or other attachments referenced in this Contract are hereby incorporated into this Contract by such reference and shall be considered a part of this Contract as if fully rewritten or set forth herein.

6.7. Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio. Any suit, action, or proceeding brought under this Contract shall be in a state or federal court of competent jurisdiction located in Cleveland, Ohio, and the Parties agree to the exclusive jurisdiction and venue of such court to resolve same.

6.8. Personal Property Taxes. The County of Cuyahoga shall not assume responsibility for the payment of any personal property taxes for any materials not owned by the County of Cuyahoga, nor shall the County of Cuyahoga pay any insurance premiums for any coverage of any property not owned by the County of Cuyahoga, Ohio. No conditions shall alter this statement.

6.9. Tax Exempt Status. The County of Cuyahoga is a tax exempt No. 29 political subdivision of the State of Ohio (Federal I.D. No. 34-6000817). Necessary tax exemption blanks will be furnished to Vendor when the Contract is signed.

6.10. Social Security Act. Vendor shall be and remain an independent contractor with respect to all Services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by Vendor for work performed under the terms of this Contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and Vendor also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

6.11. Assignment. Vendor shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract, except to a related entity or successor in interest who acquires all or substantially all of Vendor's assets, without approval of the County; provided, however, that Vendor may subcontract any work or obligations to be performed by it pursuant to this Contract as provided for herein.

6.12. Required Contract Documents. Vendor shall provide the County documents it requires prior to the issuance of the contract. These may include a signature authorization form, a worker's compensation certificate, W-9 and any form required by federal, state or local law or ordinance.

6.13. Electronic Signature. The Parties agree to conduct this transaction by electronic

means and agree that all documents requiring signatures by the County may be executed by electronic means, and that the electronic signatures affixed by the County to this Contract shall have the same legal effect as if that signature was manually affixed to a paper version of this Contract. The Parties also agree, 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.

6.14. Amendment. No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Contract.

6.15. Compliance with Laws.

6.15.1. This Contract is subject to all applicable County ordinances, including, but not limited to: i) the Cuyahoga County Ethics Ordinance, ii) the Cuyahoga County Inspector General Ordinance, and iii) the Cuyahoga County Board of Control, Contracting and Purchasing Ordinance (the "County Ordinances"). Vendor shall comply with all County Ordinances as an integral part of this Contract. Copies of all County Ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us>.

6.15.2. Vendor shall not violate any applicable federal, state or local law including, without limitation, any law related to the transportation and disposal of hazardous substances.

6.16. Discrimination Prohibited. Vendor shall not discriminate against any person or group of persons based upon race, creed, sex, religion, color, age, national origin or ancestry in its performance under this Contract.

6.17. Entire Agreement and Modification. This Contract, including any Exhibits and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the Contract between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Contract which are not fully expressed herein. The parties agree that any other terms or conditions included in any quotes, acknowledgments, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced. In the event of a conflict between this document and any Exhibit attached hereto, or hereinafter agreed to by the Parties, the terms of this document shall control.

6.18. The Vendor agrees to provide County with immediate notice if the Vendor is debarred from participating in federal programs.

6.19. Provider agrees to comply with applicable laws, regulations, directives or codes, issued by the United States government or agency, as well as the State of Ohio or state agency, as required per Ohio Administrative Code 5101:2-47-23.1(B)(8), which states, in pertinent part:

Vendor shall not permit funds to be paid or committed to be paid to any corporation, firm, association or business in which any of the members of the governing body of the agency, the executive personnel or their immediate families have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the vendor.

End of Article VI.

IN WITNESS WHEREOF, the County and Vendor have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written above.

Edward FitzGerald, County Executive

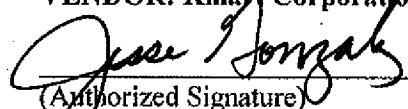
CUYAHOGA COUNTY, OHIO


2012-10-10 09:31:30

(Authorized Signature)

Date

VENDOR: Kmart Corporation


(Authorized Signature)

8/15/2012
Date

By: JESSE Gonzalez, VP, Selling Services
Name (printed) and Title

SM3278, Store Manager

To... SM3278, Store Manager

Cc...

Bcc...

Subject: RFP 21629

Attachments:

Cover Page
RFP#21629

Kmart #3278
12501 Rockside Rd
Garfield Hts Ohio 44125

SM3278, Store Manager

To... SM3278, Store Manager

Cc...

Bcc...

Subject: RE: RFP 21629

Attachments:

From: SM3278, Store Manager
Sent: Mon 1/30/2012 11:59 AM
To: SM3278, Store Manager
Subject: RFP 21629

Cover Letter
RFP#21629

Kmart #3278
12501 Rockside Rd
Garfield Hts Ohio 44125

Kmart #3278 in Garfield Hts Ohio has been in business for 35 years. We are a retail organization specializing in Apparel, Domestic Electronics, General merchandise, and seasonal items. Kmart is part of Sears Holdings which also operates Sears, Sears Grand's, and Sears Essentials



SM3278, Store Manager

From: SM3278, Store Manager
To: SM3278, Store Manager
Cc:
Subject: RFP#21629
Attachments:

Sent: Mon 1/30/2012 12:11 PM

Understanding The Project: Projects purpose is to provide dormitory or apartment type items for young adults aging out of the agency care. Kmart will not have any issues supplying the merchandise all items at this time are in the building.

Methodology: We currently have all items and quantities in our store.

Project Manager: Jeff Gundling will be handling the project.

Vendor Qualifications: Kmart has been a retailer for over 35 years at the Garfield Hts location.

Conflict of Interest: None

Cost proposal: Break down of all items are attached.

Payment: Payment of good must be made before we ship items to family services.

SM3278, Store Manager

To... SM3278, Store Manager

Cc...

Bcc...

Subject: RE: Children and Family Services Project

Attachments:

From: SM3278, Store Manager
Sent: Sun 1/29/2012 6:58 PM
To: SM3278, Store Manager
Subject: Children and Family Services Project

150 Items of each listed below.	Item Number	Cost	Total
Luggage Set Concourse Black	844448002055	59.99	
Comforter Set (Twin)	800014088403	49.99	
Bed Sheets 1 Set Cannon White	072000926536	12.99	
Pillow Cases Set of 2)	6937646922264	9.99	
2 Pillow (Jou Boxer)	072000712085	9.98	
Mattress Pad (Twin)	079633266848	9.99	
Alarm/Clock Radio	0444760084862	19.99	
Boom Box	062118400059	39.99	
Flash Light	012800601250	7.39	
First Aid Kit	072000822386	8.99	
Shower Caddy	072000834831	8.59	
Bath Tissue	054000127021	6.99	
Lysol Disinfection Spray	019200753624	2.99	
7 Towels	8964000198643	3.99(each)	27.93
20 Pack Wash Cloths	8964000199343	5.99	
Microwave	836321002863	62.99	
Dish Soap	074101008029	1.79	
Toaster	022333913741	9.49	
Box Fan	046013311900	16.99	
Glassware	072000277959	12.99	
Surge Protector	029892046873	4.79	
Laundry Basket	026947210206	8.99	
Laundry Soap	094514417003	7.29	
Dryer Sheets	072000763898	1.99	
Iron	022333172889	9.49	
Ironing Board	035988030110	14.98	
Desk Lamp	082795347624	12.99	
Soap (Dove)	011111610798	9.99	
Loiton (Suave)	0458893108679	4.29	
Toothpaste Double Pack)	03500074140	5.99	
Tooth Brush (Double Pack)	035000553331	2.99	
Shampoo (Suave)	0458893063572	3.49	
Conditioner (Suave)	0458893063589	3.49	
Deodorant	794000763808	1.99	
Total Per Child		501.76	76,264.00

Total cost of the project is \$501.76 per person total bill for the entire project is \$76,264.00