

**CONTRACT
BETWEEN
CUYAHOGA COUNTY
AND
GRIFFIN & STRONG, PC**

THIS CONTRACT made and entered into this ____ day of _____ 201____ (“effective date”), by and between the County of Cuyahoga, Ohio (the “County”), on behalf of the Cuyahoga County Fiscal Office, and Griffin & Strong, PC, with its principal office located at 235 Peachtree Street, N.E., Suite 400, Atlanta, Georgia 30303-1406 (the “Consultant”), a Georgia corporation, through its duly authorized officer.

RECITALS:

WHEREAS, the County desires to obtain a disparity study in order to determine whether a Minority and/or Female Business Enterprise Program is necessary in Cuyahoga County; and

WHEREAS, the County has entered into a contract with EuQuant, Inc. on July 11, 2013 to complete the first phase of the disparity study by performing an economical and statistical analysis of minority, female and small business performance in Cuyahoga County; and

WHEREAS, Consultant, in response to the County’s Request for Proposal, RFP #28037, dated June 28, 2013 (“RFP”), has submitted a proposal on July 26, 2013, as supplemented with the Project Work Schedule on October 2, 2013, as amended on November 19, 2013, to complete the second phase of the disparity study by collecting and analyzing anecdotal data from minority, female and small businesses in Cuyahoga County and producing a final disparity study report (“Proposal”); and

WHEREAS, the County finds the Proposal acceptable and desires to hire Consultant to furnish such services under the terms, conditions and provisions contained in this Contract.

NOW THEREFORE, the parties hereby agree as follows:

I. Scope of Services

The Consultant agrees to provide, and the County agrees to pay for collecting and analyzing anecdotal data from minority, female and small businesses in Cuyahoga County and producing a final disparity study report as further described in the Proposal, attached as Exhibit A, and the Project Work Schedule, attached as Exhibit B, both incorporated in this Contract as fully rewritten herein.

II. Term

The term of this Contract shall begin on the Effective Date and shall continue, unless extended by the County or sooner canceled or terminated under the provisions of this Contract, for a term not to exceed twelve (12) months.

Consultant has provided a Timeline for the services to be performed under this Contract which is attached as Exhibit D. Any modifications made to the Project Work Schedule and the Timeline during the Term of the Contract will not result in an increase in the total Contract amount described in Article III, paragraph A, below.

III. Contract Amount and Payments

A. Total Contract Amount

The total cost of the contract shall not exceed \$142,000.00.

B. Payments

The County shall pay Consultant \$122,000.00 for performing the services described in Article I, above,. The County shall make payments to Consultant for work competed according to the Payment Schedule, attached as Exhibit C and incorporated in this Contract as fully rewritten herein.

C. Additional Services

1. The County shall also pay an amount not-to-exceed \$20,000.00 for authorized Additional Services, as set forth in this Paragraph below.

2. Upon completion of the original scope of services identified in Article I, the County may authorize Consultant to perform additional services as needed. At the County's request, Consultant shall submit a description of the additional service and provide a cost breakdown of the scope of work and the associated travel expenses. Consultant shall not proceed with additional services until authorized in writing by the County. The travel expenses related with performing additional services shall be included in the not-to-exceed total amount authorized for Additional Services in Paragraph C(1) above.

3. In the event the County requests Consultant to travel to Cuyahoga County to conduct more than the number of presentations set forth in the Project Schedule, which presentations shall occur during the same trip that shall not exceed two consecutive days, the County shall compensate Consultant \$2,500 for the first day and an additional \$1,000 for the second day. At the County's request, Consultant shall conduct as many presentations to County officials, the public, or otherwise, during the two-day period as the County finds necessary. Further, the Consultant agrees that the presentations will be conducted by Consultant's senior staff. Consultant also agrees to revise the powerpoint presentation of the disparity study in order to address the diverse stakeholders at each presentation. No additional fees will be charged by Consultant for such additional presentations and revisions of the powerpoint presentation of the disparity study.

4. Consultant shall be responsible to interpret, explain clarify and answer questions about the anecdotal data, the legal review and the final disparity study report prepared by Consultant at no additional cost to the County. However, Consultant shall not be responsible for the work performed by EuQuant.

D. Travel Expenses

Travel expenses for performing the services described in Article I, above, are not in addition to, but are included in the total not to exceed compensation stated in Article III, paragraph B, to be

paid to Consultant. Consultant shall be compensated for out-of-pocket, travel expenses incurred in the furtherance of the scope of services only upon obtaining written authorization from the County and in conformance with the County's Travel Policy.

E. Invoicing

Consultant shall invoice the County according to the Payment Schedule on a form agreed to by the parties (an "Invoice"), for project services and/or additional services performed during the period. County agrees to notify Consultant within 10 Business Days of receipt of an Invoice in the event the County determines additional information is required to approve an Invoice. Consultant agrees to provide the County such additional information as the County may reasonably request to justify the hours and charges shown on an Invoice for the purposes of approving same. The County reserves the right to reject any Invoice in the event such requested information is not provided.

The County shall endeavor to pay any approved Invoice within 45 days of its approval.

IV. Termination

A. For Cause: If Consultant breaches any terms of this Contract, the County shall have the right to immediately terminate this Contract by giving written notice of termination to Consultant.

B. For Convenience: The County shall have the right to terminate this Contract at any time during the term with fifteen (15) days advance written notice to Consultant. The County shall compensate Consultant for the work completed up to the date of termination.

C. For Financial Instability. In the event that Consultant 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 (iv) there is a filing by or against Consultant of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately

terminate this Contract under paragraph (B) above, by giving written notice thereof.

In the event Consultant ceases to operate, no longer provides the goods and services offered in its Proposal, or the Contract is terminated pursuant to the terms included herein, Consultant shall make available to County all records, documents, materials and working papers prepared specifically for the County under this Contract in order to allow County to complete the disparity study.

V. Indemnification

To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless the County, its officers, and employees against losses, damages, expenses, suits, claims, demands, fines, penalties, awards, liabilities and costs, including reasonable attorney's fees, to the extent that the liability, or the underlying harm causing the liability, is attributable to, may arise out of or be based upon, negligence, error, act, or omission by Consultant, its principals, employees, agents, brokers, or any of its subcontractors.

At the County's option, Consultant shall defend or reimburse the County in any litigation and pay on behalf of the County all sums that the County shall become legally obligated to pay as a result of any litigation or claims incurred in connection therewith and satisfy and cause to be discharged such judgments that may be obtained against the County, its officers, agents, and employees to the extent of Consultant's indemnification obligations as set forth above.

VI. Insurance

- a. Consultant shall procure, maintain and pay premiums for the insurance coverage and limits of liability outlined below with respect to products, services, work and/or operations performed in connection with this Contract:

1. Worker's Compensation Insurance as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For consultants with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

In the event that the Consultant is not subject to compulsory state workers compensation insurance, Consultant, on behalf of its owners, members, directors, employees, agents, and affiliates, agrees to indemnify the County for all its claims for bodily injury, including death, arising from the services rendered under this Contract.

2. Commercial General Liability Insurance with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 general aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

3. Business Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily

injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

4. Errors & Omissions Liability Insurance providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$1,000,000 per claim;

\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any professional activity related to this Contract.

b. Mandatory Requirements for All Insurance Coverage

- i. The insurance policies of Consultant with the exception of the Errors & Omissions Insurance, shall each name the “County of Cuyahoga, Ohio” as an Additional Insured and shall contain the following provisions:
 1. Thirty (30) days prior notice of cancellation or material change;
 2. A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
- ii. The insurance required in Article VI (a) shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best’s rating of A VII or above.

- iii. These insurance provisions shall not affect or limit the liability of Consultant stated elsewhere in this Contract or as provided by law.
- iv. Consultant shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.
- v. Consultant shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

The limits of insurance specified above shall in no way constitute the upper limits of liability for which Consultant is responsible under Article V.

VII. Assignment

Consultant may not assign, transfer, convey, sell or pledge its rights or interest in this Contract or any part thereof, or any right or privilege created hereunder.

VIII. Confidential information and trade secrets

The parties agree to respect and abide by all Federal and State laws, rules, and regulations, including those pertaining to confidentiality and disclosure with regard to all information and records obtained or reviewed in the course of providing services under this Contract. When the Consultant submits documents and/or information that properly and legally qualifies as a trade secret, confidential or proprietary under Ohio law, Consultant must segregate all protected information and/or documents submitted to County and conspicuously mark each page as "CONFIDENTIAL - TRADE SECRET." Consultant may not take advantage of this process to mark information/documents that it wishes to keep confidential, but doesn't qualify legally as a trade secret, confidential or proprietary under Ohio law. By taking advantage of this process,

Consultant certifies that it only marked information/documents that legally qualify as a trade secret, confidential or proprietary under Ohio law as “CONFIDENTIAL – TRADE SECRET.”

IX. Miscellaneous

A. *Governing Law and Jurisdiction.* This Contract shall be governed by and construed under the laws of the State of Ohio without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Contract, and each party consents to the exclusive jurisdiction of such courts. Consultant hereby agrees not to challenge any provision in this contract, including this Governing Law and Jurisdiction provision, and not to attempt to remove any legal action outside of Cuyahoga County for any reason.

B. *No Indemnification by County.* Consultant acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no provision of this Contract or any other contract or agreement between Consultant and the County may be interpreted to obligate the County to indemnify or defend Consultant or any other party.

C. *Counterparts.* This Contract may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, and all of which shall together constitute one and that same document, and shall be binding on the signatories; and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. In the event that any signature is delivered by facsimile transmission, by email delivery of a “.pdf” format data file, or by uploading of a “.pdf” format data file on the County’s website, such signatures shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

D. *Notices.* Any notice to be given under this Contract by either party to the other may be effected either by personal delivery in writing or by certified mail, postage-prepaid, return receipt requested. Notice delivered personally shall be deemed received upon actual receipt;

notice sent by certified mail shall be deemed received on the date the return receipt is either signed or refused. Mailed notices shall be addressed to the parties at the addresses appearing below:

To the County: Cuyahoga County Fiscal Officer
1219 Ontario Street
Cleveland, Ohio 44113

With a copy to: Cuyahoga County Director of Law
Cuyahoga County Department of Law
1219 Ontario Street, 4th Floor
Cleveland, Ohio 44113

To Consultant: Griffin & Strong , PC
235 Peachtree Street, N.E., Suite 400
Atlanta, GA 30303-1406

E. *Entire Agreement.* This Contract constitutes the entire agreement between the parties, either express or implied, with respect to the subject matter hereof. No modification of this Contract shall be binding upon the parties unless set forth in writing and signed by both parties, or their respective successors or assigns.

F. *No Apparent Authority/Proper Approvals.* Consultant recognizes and agrees that no public official or employee of Cuyahoga County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County's Contracting and Purchasing Procedures Ordinance.

G. *Parties Bound and Benefited.* This Contract shall bind and benefit the parties hereto and, as applicable, their respective owners, members, directors, officers, representatives, successors, and assigns.

H. *Non-Waiver.* The County's failure to require performance of any provision of this Contract, or if it requires performance and does not follow through, shall not affect the County's right to require performance at any time thereafter. Additionally, the County's waiver of any breach or default of this Contract shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.

I. *Contract Interpretation and Construction.* In the event an ambiguity or question of intent or interpretation arises, this Contract shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the provisions of this Contract. In the event of any variance between the provisions of this Contract and the exhibits to this Contract, the provisions of the document shall govern in the following order: (1) this Contract; (2) the RFP; (3) the Proposal.

J. *Severability.* If any provision of this Contract is invalid or unenforceable for any reason, this Contract shall be divisible as to such provision and the remainder of this Contract shall be and remain valid and binding as though such provision was not included.

K. *Applicable County Ordinances.* All County contracts, including this Contract, are subject to all applicable County ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

L. *Public Records.* Notwithstanding the above, all parties hereto acknowledge that County is a political subdivision in the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and any and all documents in any format or media.

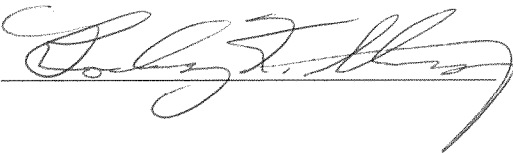
M. *Independent Contractor.* Consultant shall be and remain an independent contractor with respect to all services performed herein and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age 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 Consultant 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 Consultant also agrees to indemnify and save harmless Cuyahoga County from such contributions, taxes or liability.

N. *Electronic Signature.* By entering into this Contract, Consultant agrees on behalf of its respective officers, employees, subcontractors, subgrantees, agents or assigns, 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 County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. Consultant 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 County.

IN WITNESS WHEREOF, the parties have hereunto set their hands by their duly authorized respective officer(s), and affixed the seals of said parties:

GRIFFIN & STRONG. PC

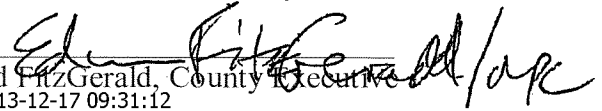
By: 

Title: C.E.O.

Date: 12/6/2013

COUNTY OF CUYAHOGA, OHIO

Edward FitzGerald, County Executive

By: 
Edward FitzGerald, County Executive
2013-12-17 09:31:12

Date: _____