

Contract

THIS CONTRACT (the "Contract") is made this 1st day of March, 2013, by and between the **CUYAHOGA COUNTY, Ohio on behalf of its Division of Children and Family Services** (the "County" or "CCDCFS") and University Physicians, Inc., a 501(c)(3) organization, with offices at 13199 East Montview Boulevard, P.O. Box 111719, Aurora CO 80042-1719 (the "Consultant").

RECITALS

WHEREAS, the County issued a Request for Proposal (RFP #24104) for the selection of an entity to assist CCDCFS with its Race Equity Initiative ("the Project"); and

WHEREAS, University Physicians, Inc. of Aurora CO is the fiscal agent for "The Kempe Center for the Prevention of Child Abuse and Neglect, Department of Pediatrics, School of Medicine, University of Colorado, Anschutz Campus," a nationally recognized institution of higher education, which will be referred to as "Consultant"; and

WHEREAS, Consultant submitted a proposal to perform the Project to the Commission, a copy of which is attached hereto as Exhibit A (the "Proposal"); and

WHEREAS, Consultant was found by CCDCFS to be qualified to perform the Project and the Proposal has been accepted by the CCDCFS.

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 CCDCFS and Consultant hereby agree as follows

ARTICLE 1.

AGREEMENT, TERM, PERFORMANCE

1.1. Agreement. By execution of this Contract, the CCDCFS agrees to purchase from Consultant and Consultant agrees to provide to the CCDCFS those services described in the Proposal, attached as Exhibit A, in accordance with the terms of this Contract. In the event of a conflict between any provision of this Contract and any provision in the Proposal, the terms and conditions of this Contract, shall control.

1.2. Term. The term of this Contract (the "Term") shall commence as of March 1, 2013 (the "Effective Date") and end on March 31, 2014 (the "Completion Date"); In the event Consultant is, for any reason, unable to start the work described herein on the Effective Date, then the Consultant shall immediately notify the CCDCFS Administrator or the CCDCFS's designee (the "Project Manager"). The Term is subject to prior termination in accordance with Section 1.2 and Article 5, below.

1.3. Satisfactory Performance of Duties. Notwithstanding any other provision of this Contract, this Contract shall continue only for such time as the services rendered by Consultant are satisfactory to the CCDCFS, in its sole discretion.

End of Article 1

ARTICLE 2. **SCOPE of WORK**

2.1 Generally. Consultant acknowledges that the Project is to assist CCDCFS in developing its Race Equity Initiative as noted in Section II of the Proposal.

2.2 Scope of Work. Consultant shall perform the Project in accordance with Section III & IV of the Proposal, Methodology and Project Management.

2.3 Deliverables. Upon completion of the Project, and on or before the Completion Date, Consultant shall provide the deliverables as set forth in pages 4-6 of the Proposal, as well as Chart 3, Page 11 of the Proposal.

2.4 Access to Information. The Consultant will request any and all information that it reasonably determines necessary to perform the Project.

2.5 Times of Performance. To the extent that the performance of this Contract requires Consultant to be at the County's designated office, Consultant shall have access to same on any Business Day (as defined below). All other Project services required to be performed may be performed at such times determined to be appropriate by Consultant. Consultant shall devote the required time, ability, and attention to the duties set forth herein in order to complete the Project pursuant to the terms of this Contract. For purposes of the Contract, "Business Day" means between the hours of 8:30 a.m. and 4:30 p.m. on any day the County's offices are not authorized or required to be closed for business; any reference herein to "day" or "days" rather than "Business Day" shall mean a calendar day.

2.6 Subcontracting. No portion of the Project may be subcontracted by Consultant absent the written consent of the Project Manager.

2.7 Work Space. At the commencement of this Contract, Consultant shall have the option to utilize furnished work and office space at a location designated by the CCDCFS. Consultant shall also be permitted to work from a home office.

End of Article 2

ARTICLE 3.
COMPENSATION & RETAINAGE

3.1 Compensation. In consideration of Consultant performing the Project as set forth herein, Consultant shall receive compensation under this Contract in accordance with the budget, attached as Exhibit B to this Contract, in an amount not to exceed \$48,426.87 (the "Compensation"). The Compensation will be earned at an hourly rate and for completion of certain events as described in Exhibit B. Consultant shall document the hours or partial hours spent working on this project and provide such information along with the invoice, with billing in tenths of an hour; as long as the services provided are satisfactory to CCDCFS, in its sole discretion. Consultant shall complete the Project for an amount not to exceed the total dollar amount listed in this paragraph. No additional funds will be made available to complete the Project. Consultant shall complete the Project even if has expended all available funds.

3.2 Invoicing. Consultant shall invoice the County every 30 days (an "Invoice"), for Project services performed during the period shown on such invoice. County agrees to notify Consultant within 10 Business Days of receipt of an Invoice in the event the Fiscal Officer or Project Manager 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.

3.3 Payment. The County shall endeavor to pay any approved Invoice within 30 days of its approval. The payments will be sent to: University Physicians, Inc., Finance Department, P.O. Box 110247, Aurora CO 80042-0247.

3.4 Maximum Dollar Amount. The amounts paid under this Contract may not exceed \$48,426.87, which is considered the "Maximum Dollar Amount" of the Contract. This Contract shall not be construed as a guarantee by CCDCFS that Consultant will be paid the Maximum Dollar Amount.

3.5 Time Period for Invoicing. All invoices must be provided to CCDCFS on or before the 15th day of the month following the delivery of the service. In no event may an invoice be submitted after sixteen days following the "Completion Date."

End of Article 3

ARTICLE 4.
ADDITIONAL REPRESENTATION AND
COVENANTS OF CONSULTANT

4.1 Status of Consultant. The relationship of Consultant to the County shall be that of an independent contractor. No principal-agent or employer-employee relationship is created by this Contract. Consultant will be solely responsible for reporting, withholding and/or paying all employment-related taxes, payments and/or

withholdings, including, but not limited to federal, state, and local income taxes, social security, Medicare, unemployment or disability insurance and Worker's Compensation Insurance.

4.2 Prior Agreements. Consultant represents that it has disclosed to the Project Manager any employment agreements and/or any other agreements which impose any restrictions on Consultant in performance of the Project. Consultant represents that he is under no obligation which in any manner may prohibit and/or restrict his authority to sign this Contract and/or to perform the Project.

4.3 Confidential Information.

4.3.1 County Information. Consultant shall not, during the Term, directly or indirectly, use, disseminate, or disclose to any person, firm, or other business entity for any purpose whatsoever, any information related to the County's process or systems not generally known in the industry which was disclosed to or acquired by Consultant as a consequence of or through the performance of this Contract; including, without limitation, information regarding the County systems, data base, processes, and related matters, and also includes information relating to research, development, procedures and manuals.

4.3.2 Third-Party Information. Consultant represents that he/she has not disclosed and will not disclose any confidential and proprietary information belonging to a third party, without first obtaining the written consent from the third party and the Project Manager.

4.4 Ownership of Data. Consultant shall hold in a fiduciary capacity for the benefit of the County all information obtained by Consultant in performance of the Project which may be directly or indirectly related to the business of the County.

4.4.1 All data collected in conjunction with the Project shall remain the property of the County and no use or copying of such data shall be made except in connection with this Contract without the written permission of the Program Manager.

4.4.2 To protect the interests of the County, Consultant agrees that during or after the termination of this Contract, all documents, records, notebooks, computer files, and similar repositories containing such information, including copies of such items then in Consultant's possession or work area, whether prepared by the County or others, are the property of the County and shall be returned to the County. All files, records, documents, drawings, specifications, equipment, and similar items relating to the business of the County, whether prepared by Consultant or otherwise coming into his/her possession, shall remain the exclusive property of the County and shall not be removed from the County office under any circumstances without the prior written consent of the Program Manager.

4.4.3 Consultant shall not at any time use any information, data, computers, computer generated data or any other form of information which he/she may have access to as a result of this contract for the purpose other than the performance of this Contract.

4.4.4 All final written documents, including drafts submitted to CCDCFS, are the sole property of CCDCFS and Consultant waives any and all claims to the materials, including claims of ownership of the design of the document and copyright. The final document will not include a logo or other reference to the Consultant. CCDCFS reserves the right to determine the design of the final document.

4.5 Consultant will be exclusively responsible and liable for its acts and omissions including those of its employees and agents during the course of the Contract.

End of Article 4

ARTICLE 5.

TERMINATION

5.1 Termination for Cause. If Consultant willfully breaches or habitually neglects the duties required to be performed under this Contract, the CCDCFS, in its sole discretion, may immediately terminate this Contract by giving written notice of termination to Consultant without prejudice as to any other remedy to which the County may be entitled either at law, in equity, or under this Contract.

5.2 Termination for Convenience. Either party, by thirty (30) days written notice to the other, may terminate this Contract at any time for any reason.

5.3 Option to Terminate if Consultant Permanently Disabled. If Consultant becomes temporarily or permanently disabled such that, in the CCDCFS's reasonable discretion, Consultant will be unable to complete the Project by the Completion Date, the CCDCFS may terminate this Contract by giving written notice of termination to Consultant.

5.4 Effect of Termination on Compensation. In the event this Contract is terminated in accordance with this Article 5, Consultant shall be entitled to compensation earned for completion of any portion of the Project prior to the date of termination in accordance with Article 3. In such event, Consultant shall be entitled to no further compensation.

End of Article 5

ARTICLE 6.
GENERAL PROVISIONS

6.1 Public Comment. Consultant acknowledges that he/she has been expressly advised and agrees that the CCDCFS or, if so designated by the CCDCFS, the Project Manager is the official spokesperson for the CCDCFS before the public and news media. Therefore, any invitations to comment publicly regarding any matter which pertains to the Project or other business of the CCDCFS shall be declined and referred to the Project Manager.

6.2 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, returned 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; either party may designate a different address upon written notice to the other party in accordance with this Section 6.2.

To the CCDCFS: Cuyahoga County Division of Children & Fam. Serv.
3955 Euclid Avenue
Cleveland, Ohio 44115
Attn: Administrator

Copy to: Cuyahoga County Prosecutor's Office
1200 Ontario Street
Justice Center, 8th Floor
Cleveland, Ohio 44113
Attn: Chief, Civil Division

To Consultant: The Kempe Center for the Prevention
& Treatment of Child Abuse & Neglect
13123 East 16th Avenue, B390
Aurora Colorado 80045
Attn: Donna L. Parrish, M.A., LPC
Director of Diversity and Inclusion

6.3 Background Check/Drug Testing. The County may require Consultant to undergo a criminal background check, including fingerprinting, and drug testing.

6.4 Amendments. This Contract may not be amended or supplemented except by a writing executed by the County and the Consultant.

6.5 Laws Governing Contract/Forum.

6.5.1 This Contract shall be governed by and construed in accordance with the laws of the State of Ohio. In addition, all governmental immunities afforded Consultant, under Colorado law and Cuyahoga County, under Ohio law, shall remain in full force and effect.

6.5.2 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"). Contractor 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/>.

6.6 Attorneys' Fees and Costs. If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, each party shall pay their own attorneys' fees and costs.

6.7 Expense Reimbursement. There are no expenses for which Consultant will be reimbursed.

6.8 Entire Agreement. This Contract supersedes all other oral and written agreements between the parties and this Contract contains all of the covenants and agreements between the parties.

6.9 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.

6.10 Insurance. Consultant, which is part of The University of Colorado, maintains self-insurance as permitted by Colorado law which is available to satisfy the insurance requirements contained in the County's RFP. A copy of the coverage document is attached to this contract as Exhibit C.

End of Article 6

{Balance of this page intentionally left blank; signature page follows.}

IN WITNESS WHEREOF, the Parties have each caused their duly authorized representatives to execute this Contract.

CUYAHOGA COUNTY, OHIO Executive

Ed FitzGerald

2013-03-11 09:07:31

Date: _____

By: Edward FitzGerald, County Executive

University Physicians, Inc.

Joe S.

Date: 1-10-13

By:
Title

Executive Director