

COUNTY OF MILWAUKEE
Inter-Office Communication

DATE: November 16, 2012

TO: Supervisor Marina Dimitrijevic, Chairwoman, Milwaukee County Board of Supervisors

FROM: Jim Sullivan, Director, Department of Child Support Services

SUBJECT: Authorization to execute extension of genetic test contract between Child Support and DNA Diagnostic Center Inc.

The Department of Child Support Services respectfully requests authorization to execute an extension of Child Support's professional services agreement with DNA Diagnostic Center Inc. (DDC) to provide genetic testing services from January 1, 2013, through December 31, 2013.

DISCUSSION

After a competitive bid process in 2008, the Department selected Orchid Cellmark Inc. (Orchid) to provide genetic test services for the price of \$32.25 per person tested, for the period February 1, 2009, through December 31, 2011, with the option of extending such services for two additional one year periods. This agreement received the approval of the Community Business Development Partners, Risk Management, Corporation Counsel, and the County Board, by Resolution 09-51, and that agreement was executed in February of 2009 (attachment #1).

On May 8, 2009, the Department and Orchid, with the approval of Risk Management and Corporation Counsel, entered into an addendum to that contract that modified the Certificate of Insurance provision (attachment #2).

On December 15, 2011, after the Community Business Development Partners, Risk Management, Corporation Counsel approved a one year extension, the Board of Supervisors, by Resolution 11-469, extended the contract for one year (attachment #3).

In late 2011, Orchid was acquired by Laboratory Corporation of America Holdings (LabCorp). As part of that acquisition, LabCorp was required by federal regulatory process to divest Orchid's government paternity testing business to DDC. To maintain uninterrupted genetic testing services, and with the approval of Corporation Counsel, Child Support agreed to release Orchid from its contractual obligations in exchange for DDC taking over those obligations. This agreement was memorialized in a 2012 Assignment and Release (attachment #4).

The original contract is now eligible for its second and final extension.

FISCAL EFFECT

A fiscal note is attached, reflecting no direct county fiscal impact, as execution of this extension was anticipated and included in the 2013 budget.

RECOMMENDATION

The Department recommends that the County Board of Supervisors authorize the Child Support Director to execute a one year extension of this genetic test contract. The extension has been approved by Community Business Development Partners, Risk Management and Corporation Counsel.

Respectfully submitted,



Jim Sullivan, Director
Department of Child Support Enforcement

Electronic copies with attachments to:

Chris Abele, Milwaukee County Executive
Mark Borkowski, Chairman, Judiciary, Safety and General Services Committee
Amber Moreen, Chief of Staff, Milwaukee County Executive's Office
Craig Kammholz, Fiscal & Budget Administrator, Department of Administrative Services
Jennifer Collins, Analyst – County Board
Josh Fudge, Fiscal & Strategic Planning Coordinator – Department of Administrative Services
Janelle Jensen, Committee Clerk – County Board

Attachments

FEB - 5 2009

Adopted
18-0

File No. 09-51
(Journal, February 5, 2009)

(ITEM 4) From Director, Child Support Enforcement, requesting authorization to execute a professional services contract for genetic testing with Orchid Cellmark, Inc., Princeton, New Jersey, effective February 1, 2009 through December 31, 2011, with the ability to execute two one-year extensions, by recommending adoption of the following:

A RESOLUTION

WHEREAS, the Director of Child Support Enforcement, has requested authorization to execute a professional services contract with Orchid Cellmark, Inc. of Princeton, NJ to perform genetic test services for the period of February 1, 2009 through December 2011, with the ability to execute two one-year extensions; and

WHEREAS, the Wisconsin Department of Children and Families, Division of Family and Economic Security, Bureau of Child Support limited the number of State approved genetic testing vendors effective July 1, 2008; and

WHEREAS, The Milwaukee Department of Child Support released a request for proposals to the five State approved vendors on September 30, 2008; and

WHEREAS, Orchid Cellmark and Laboratory Corporation of America responded to the request for proposals, Orchid Cellmark provided the lowest price for the services based on a their best and final offer; and

WHEREAS, the 2009 departmental budget provides an appropriation of \$343,906 for this service; and

WHEREAS, the Committee on Judiciary, Safety and General Services Committee, at its meeting on January 22, 2009, recommended approval (vote 6-0) of the contract with Orchid Cellmark, Inc.; now, therefore,

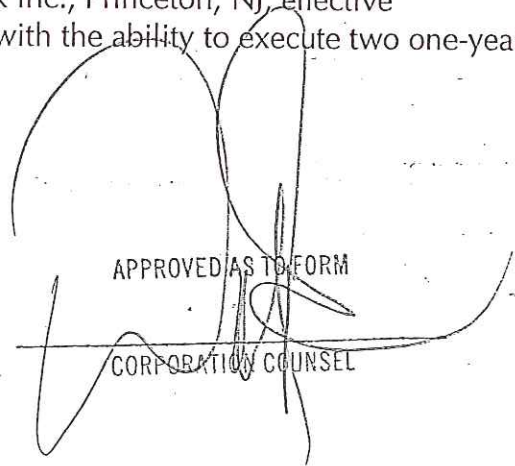
BE IT RESOLVED, that, the Milwaukee County Board of Supervisors does hereby authorize the Director of Child Support Enforcement to execute a professional services contract for genetic testing with Orchid Cellmark Inc., Princeton, NJ, effective February 1, 2009 through December 31, 2011, with the ability to execute two one-year extensions.

STATE OF WISCONSIN
MILWAUKEE COUNTY

I, the undersigned County Clerk in and for the County of Milwaukee, State of Wisconsin, do hereby certify that I have made a comparison of this document with the original on file in my office and that the same is a full, true and correct copy.

In testimony whereof, I affix my signature and the seal of Milwaukee County this 5th day of March 2009


Milwaukee County Clerk


APPROVED AS TO FORM
CORPORATION COUNSEL

ADDENDUM TO 2009-2011 PURCHASE OF SERVICES AGREEMENT
BETWEEN MILWAUKEE COUNTY,
BY THE DEPARTMENT OF CHILD SUPPORT ENFORCEMENT, AND
ORCHID CELLMARK INC

Service Provided: Paternity Genetic Testing

Addendum Title:

Modification of Certificate of Insurance Provision - Section 12, Subsection H

This addendum to the 2009-2011 Purchase of Services Agreement between Milwaukee County, by the Milwaukee County Department of Child Support Enforcement, ("County") and Orchid Cellmark Inc. ("Contractor") is entered into on May 8, 2009.

The agreement and terms specified in the 2009-2011 Purchase of Services Agreement between the County and the Contractor shall remain in full effect with the exception of Section 12 (Indemnity and Insurance), Subsection H, which shall be deleted and replaced with the following:

If Contractor's Insurance is underwritten on a Claims-Made basis, the Retroactive date shall be prior to or coincide with the date of this Agreement, the Certificate of Insurance shall state that *professional malpractice or errors and omissions coverage, if the services being provided are professional services coverage* is Claims-Made and indicate the Retroactive Date, and Contractor shall maintain coverage for the duration of this Agreement and for three (3) years following the completion of this Agreement.

It is also agreed that on Claims-Made policies, in the event Contractor does not maintain coverage with a retroactive date prior to the original contract initiation date for the three years following completion of the Agreement as required by the preceding paragraph, the Contractor agrees to provide notice to the County and the County may direct the Contractor and the Contractor will procure the tail coverage for the three year period and that the Extended Reporting Period Premium shall be paid by Contractor.

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the day, month, and year indicated.

COUNTY: [Signature] 5/8/09
Interim Director Date
Department of Child Support Enforcement

CONTRACTOR: [Signature] 5/8/09
Contractor Representative Date
William J. Thomas, Vice President &
Name and Title of Contractor Representative
General Counsel

1

2

File No. 11-469

3 (ITEM) From the Director, Child Support Enforcement, requesting authorization to
4 execute extension of Genetic Test Contract between Child Support and Orchid Cellmark,
5 Inc. effective January 1, 2012 through December 31, 2012, by recommending adoption of
6 the following:

7

8

A RESOLUTION

9 WHEREAS, the Department of Child Support Enforcement, pursuant to §767.80 (6m)
10 Wis. Stats., is required to establish paternity for any child born in the County who does not
11 have a father's name on the birth certificate; and

12

13 WHEREAS, the Department is required to provide genetic testing in paternity cases
14 pursuant to §767.84 (5) Wis. Stats.; and

15

16 WHEREAS, the Department is required to use a state-approved genetic test vendor
17 in order to have the test costs qualify for federal reimbursement; and

18

19 WHEREAS, the State of Wisconsin recognizes Orchid Cellmark Inc. as an approved
20 vendor for genetic testing; and

21

22 WHEREAS, the Director of Child Support has requested authorization to execute a
23 one year extension of the terms of the 2009 – 2011 genetic test contract with Orchid
24 Cellmark Inc., which was awarded based on a request for proposal successful bid; and

25

26 WHEREAS, the 2009 – 2011 genetic test contract was approved by the Milwaukee
27 County Board Resolution 09-51; and

28

29 WHEREAS, the term of the one year extension shall be from January 1, 2012, through
30 December 31, 2012; and

31

32 WHEREAS, the 2012 Department budget provides an appropriation of \$475,000 for
33 this service; now, therefore,

34

35 BE IT RESOLVED, that the Committee on Judiciary, Safety, and General Services of the
36 Milwaukee County Board of Supervisors hereby authorizes the Director, Child Support
37 Enforcement, to execute an extension of the contract for genetic testing with Orchid
38 Cellmark Inc. effective January 1, 2012 through December 31, 2012.

39

ASSIGNMENT OF CONTRACT AND RELEASE

This assignment (the "Assignment") is made by and between Milwaukee County, a Wisconsin Municipal Corporation, by Milwaukee County Department of Child Support Services ("CLIENT"), Orchid Cellmark, Inc. ("Orchid"), and DNA Diagnostics Center, Inc. ("DDC") of the contract described herein (the "Contract"). This Assignment shall be effective as of March 7, 2012 (the "Effective Date").

WITNESSETH

WHEREAS, the CLIENT and Orchid have entered into a Contract for Paternity Testing Services effective February 1, 2009; and

WHEREAS, Laboratory Corporation of America Holdings ("LabCorp") acquired Orchid on December 15, 2011, and as a part of such transaction became a wholly-owned subsidiary of LabCorp. Due to the regulatory clearance process for the acquisition, LabCorp agreed to divest Orchid government paternity testing business in the United States to DDC, an Ohio corporation having its principal place of business at One DDC Way, Fairfield, OH 45014; and

WHEREAS, Orchid has acted to transition the Contract from Orchid to DDC, and hence, Orchid desires to assign to DDC the rights, duties, obligations and liabilities of the Contract as of the Effective Date; and

WHEREAS, the CLIENT agrees for Orchid to assign the rights, duties, obligations and liabilities of the Contract to DDC as of the Effective Date; and

WHEREAS, DDC desires to accept assignment of the rights, duties, obligations and liabilities of the Contract as of the Effective Date.

NOW THEREFORE, the CLIENT, Orchid, and DDC agree as follows:

1. Orchid agrees to assign, transfer, and deliver unto DDC all the rights, title and interests in, to and under the Contract, including without limitation the duties, obligations, liabilities and claims for damages arising under the Contract as of the Effective Date.
2. DDC hereby agrees and accepts this Assignment of the Contract and assumes, as a direct obligation to CLIENT, all the rights, title and interests in, to and under the Contract, including without limitation the duties, obligations, liabilities and claims for damages arising under the Contract as of the Effective Date.
3. CLIENT hereby consents to the Assignment of the Contract by Orchid to DDC and of the assumption of the Contract by DDC as described herein and as of the Effective

Date. Consistent with this Assignment, CLIBNT shall look only to DDC from and after the Effective Date for the performance of the Contract.

4. Except to the extent of any such rights, duties and obligations which arose prior to the Effective Date, CLIENT releases and forever discharges Orchid, its affiliates and each of their respective officers, directors, employees and agents from and of each covenant and condition of, and each liability or obligation arising under the Contract, and on and after the Effective Date. Orchid shall no longer be bound by or have any obligation or liability with respect to the Contract.

5. Orchid shall indemnify and hold DDC, its affiliates and each of their respective officers, directors, employees and agents harmless from and against any liabilities, losses, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and defense costs) of any kind or nature whatsoever which may be sustained or suffered by any of them arising out of or in any way related to Orchid's performance or nonperformance under the Contract prior to the Effective Date.

6. This Assignment shall be binding on and inure to the benefit of the parties and their successors.

7. Assignment is subject to the terms and conditions of the Milwaukee County RFP published September 22, 2008, the 2009 Purchase of Service Contract between Orchid and Client, and Amendment No. 2 to the 2009 Purchase of Service Contract executed between Orchid and Client in January of 2012.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be hereunder subscribed by their respective proper officers hereto duly authorized.

MILWAUKEE COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES ORCHID CELLMARK, Inc.

By: [Signature]
Name: Jim Sullivan
Title: Director, Child Support Services
Date: 3-6-2012

By: Angie R. Miller
Name: Angie R. Miller
Title: Contract Manager
Date: 3-6-12

APPROVED AS TO LEGAL FORM

DNA DIAGNOSTICS CENTER, INC.

By: _____
Date: _____

By: Lori Neff
Name: Lori Neff
Title: Director, Customer Service
Address: One DDC Way,
Fairfield, OH 45014