

**SERVICE CONTRACT**  
**EASTER SEALS SOUTHEAST WISCONSIN**

This Contract between Milwaukee County, a Wisconsin municipal body corporate (hereinafter called the "County"), represented by its Office for Persons with Disabilities, and Easter Seals Southeast Wisconsin (hereafter called "Contractor"), is entered into as of January 1, 2017.

1. SCOPE OF SERVICES.

Contractor shall specifically perform all of the tasks and achieve the objectives set forth in its proposal, dated August 17, 2016, which is attached hereto as Exhibit A and incorporated herein by reference, and the County Request for Proposal, dated July 6, 2016, which is attached hereto as Exhibit B and also incorporated herein by reference. If there is a variance between the Contractor's proposal and the County's Request For proposal, the latter shall be controlling, unless otherwise provided for in writing.

The Contract consists of the following four documents listed below, all of which are incorporated herein by reference, in the following order of precedence that will govern any inconsistencies between the terms of this Contract and the terms of any Exhibits, Schedules, or Attachments thereto:

- a) This Non-Professional Service Contract
- b) Milwaukee County Request for Proposal # 98160021
- c) Contractor's Proposal
- d) Terms and Conditions (Labeled Exhibit C)

2. STAFFING.

Contractor represents that its employees and subcontractors possess the necessary skill, expertise, and capability, including sufficient personnel with the necessary qualifications, to perform the services required by this Contract. Contractor shall provide, at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be the employees of, or have any other contractual relationship with, the County.

3. DATES OF PERFORMANCE.

The term of this Contract shall be from January 1, 2017 through December 31, 2019, with the option of up to two one-year extensions to be exercised in the sole discretion of the County, or until such time as either party notifies the other of its termination, as provided herein.

4. COMPENSATION.

Contractor shall be compensated for work performed as provided in Contractor's Proposal. This compensation shall include any and all out-of-pocket expenses incurred by Contractor or its employees. The total compensation to Contractor for services performed under the Contract shall not exceed \$266,937.00 per year unless agreed to by County in writing. The County will reimburse Contractor for up to \$73,000.00 per year in transportation costs for summer camp within 30 days of receipt of an invoice from Contractor for such transportation costs after summer camp has concluded. State Prompt Pay Law, Section 66.285, does not apply to this Contract. As a matter of practice, the County attempts to pay all invoices in 30 days.

5. BILLING.

Contractor shall provide County with monthly billings, which shall include, but not be limited to, the following:

- A. Name and address of contractor  
Invoice date and number  
Contract number
- B. Dates and hours worked-- Description, quantity, unit of measure, unit price and extended price of the services delivered  
Remittance name and address
- C. General task(s) performed
- D. Name, title, and phone number of person to notify in event of defective invoice

Invoices should be sent to:

Tim Ochnikowski, Director  
Milwaukee County Office for Persons with Disabilities  
901 North 9<sup>th</sup> Street, Room 307-B  
Milwaukee, WI 53233

The County reserves the right to use a purchasing card to pay invoices.

6. REPORTS.

Contractor shall provide written progress reports to County as requested.

7. OWNERSHIP OF DATA.

Upon completion of the work or upon termination of the Contract, it is understood that all completed or partially completed data, drawings, records, computations, survey information, and all other material that Contractor has collected or prepared in carrying out this Contract shall be provided to and become the exclusive property of the County. Therefore, any reports, information and data, given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of County.

No reports or documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor.

8. COUNTY RIGHTS OF ACCESS AND AUDIT.

The Contractor, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor related to the performance of the Contract for a period of up to three years following the date of last payment. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities

as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities.

9. AFFIRMATIVE ACTION.

The Contractor assures that it will undertake an affirmative action program as required by Milwaukee County Code of General Ordinances (MCCGO) 56.17(1d), to insure that no person shall, on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in MCCGO 56.17(1d). The Contractor assures that no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Contractor assures that it will require that its covered organizations provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by MCCGO 56.17(1d), to the same effect.

10. DISADVANTAGED BUSINESS ENTERPRISES.

- A. Contractor shall comply with all provisions imposed by or pursuant to Milwaukee County Code of General Ordinances Chapter 42 when and where applicable, and as said Ordinance may be amended. The County shall notify Contractor in the event that new ordinances are issued.
- B. Contractor shall adhere to the approved DBE participation plan contained in this contract, which assures that 0 percent of the Contract be attributed to a firm certified by the County or an entity whose certification is recognized by the County throughout the term of this Contract. Approval must be obtained from the County prior to making any change(s) to the approved DBE participation plan.
- C. If Contractor fails to achieve and maintain the level of DBE participation stated in this Contract, Contractor shall provide documentation to the County demonstrating that it made good faith efforts in its attempt to meet the stated level of participation. If Contractor fails to reflect a good faith effort to achieve and maintain the level of DBE participation stated herein throughout the term of this Contract, County may consider this as a material breach of the Contract and may terminate the Contract in accordance with Section 17 of this Contract.
- D. Contractor shall submit monthly reports online as required by the County for the purpose of demonstrating compliance with this Section.

11. NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAMS.

In the performance of work under this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, sex, sexual orientation, gender identity and expression, age, ancestry or nationality, political or religious affiliation, creed, or disability, which shall include, but not be limited to, the following:

Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor will post in conspicuous places, available for employees and applicants for employment, notices to be provided by the County setting forth the provisions of this

nondiscriminatory clause. A violation of this provision shall be sufficient cause for the County to terminate the contract without liability for the uncompleted portion or for any materials or services purchased or paid for by the Contractor for use in completing this Contract.

Contractor agrees to strive to implement the principles of equal employment opportunities through an effective Affirmative Action program, and has so indicated on the Equal Employment Opportunity Certificate attached hereto as and made a part of this Contract. The program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups, at all levels of employment, in all divisions of Contractor's workforce, where these groups may have been previously under-utilized and under-represented. Contractor also agrees that in the event of any dispute as to compliance with the aforesaid requirements, it shall be its responsibility to show that it has met all such requirements.

When a violation of the non-discrimination, equal opportunity or Affirmative Action provisions of this section has been determined by County, Contractor shall immediately be informed of the violation and directed to take all action necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations.

If, after notice of a violation to Contractor, further violations of the section are committed during the term of the Contract, County may terminate the Contract without liability for the uncompleted portion or any materials or services purchased or paid for by the Contractor for use in completing the Contract, or it may permit Contractor to complete the Contract, but, in either event, Contractor shall be ineligible to bid on any future contracts let by County.

12. INDEMNITY.

Contractor agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, County, and its agents, officers and employees, from and against all loss or expense including costs and attorney's fees by reason of statutory benefits under Workers' Compensation Laws, or liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of Contractor, or its (their) agents which may arise out of or are connected with the activities covered by this Contract.

Contractor shall indemnify and save the County harmless from any award of damages and costs against County for any action based on U.S. patent or copyright infringement regarding computers programs involved in the performance of the tasks and services covered by this Agreement.

13. INSURANCE.

The Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. The Contractor may effect and maintain any insurance coverage, including, but not limited to, Worker's Compensation, Employers Liability and General Contractual, Profession and Automobile Liability, to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation or benefits payable under Worker's Compensation laws or other insurance provisions.

The Contractor shall provide evidence of the following coverages and minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation or Proof of All States Coverage	Statutory (waiver of subrogation)
Employer's Liability	\$100,000/500,000/100,000
Commercial or Comprehensive General Liability Bodily Injury and Property Damage (incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	\$1,000,000 Per Occurrence \$1,000,000 General Aggregate
Professional Liability	\$1,000,000 Per Occurrence \$1,000,000 Aggregate
Automobile Liability Bodily Injury & Property Damage All Autos-Owned, non-owned and/or hired Uninsured Motorists	\$1,000,000 Per Accident Per Wisconsin Requirements

Milwaukee County will be named as an additional insured for General, Automobile, Garage Keepers Legal and Environmental Impairment Liability, as respects the services provided in this Contract. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the County for the duration of this Contract.

Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Contract.

The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the County Risk Manager.

A.1. Compliance with Governmental Requirements.

Contractor shall evidence satisfactory compliance for Unemployment Compensation and Social Security reporting as required by Federal and State Laws.

A.2. Professional Liability – Additional Provisions.

Contractor agrees to provide additional information on their professional liability coverages as respects policy type, i.e., errors and omissions for consultants, architects, and/or engineers, etc.;

applicable retention levels; coverage form, i.e., claims made, occurrence; discover clause conditions, and effective retroactive and expiration dates, to the County Director of Risk Management and Insurance as may be requested to obtain approval of coverages as respects this section.

It is understood and agreed that coverages that apply to the services inherent in this Contract will be extended for two (2) years after completion of all work contemplated in this project if coverage is written on a claims-made basis.

The Contractor shall certify and make available loss information from any Insurer as to any claims filed or pending against any and all professional liability coverages in effect for the past five (5) years, if requested.

The Contractor shall certify to inform the County of any claims filed for errors and omissions that may be covered under professional coverages pursuant to the work within ten (10) days of notice of the occurrence or claim filing, whichever is sooner.

Deviations and waivers may be requested in writing based on market conditions to the County Director of Risk Management and Insurance. Approval shall be given in writing of any acceptable deviation or waiver to the Contractor prior to the Contractor effecting any change in conditions as contained in this section. Waivers shall not be unduly withheld nor denied without consultation with the Contractor.

It is understood that the Contractor will obtain information on the professional liability coverages of all subcontractors in the same form as specified above for review of the County.

14. PERMITS, TAXES, LICENSES.

Contractor is responsible for procuring, maintaining and paying for all necessary federal, state, and local permits, licenses, fees and taxes required to carry out the provisions of this Contract.

15. TERMINATION BY CONTRACTOR.

Contractor may, at its option, terminate this Contract upon the failure of the County to pay any amount that may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

16. TERMINATION BY COUNTY FOR VIOLATIONS BY CONTRACTOR.

If the Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, the County shall there upon have the right to terminate it by giving thirty (30) days written notice of termination of contract, specifying the alleged violations, and effective date of termination. It shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation prior to the end of the thirty (30) day period. In the event of termination, the County will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

17. UNRESTRICTED RIGHT OF TERMINATION BY COUNTY.

The County further reserves the right to terminate the Contract at any time for any reason by giving Contractor thirty (30) days written notice of such termination. In the event of said termination, the Contractor shall reduce its activities hereunder as mutually agreed to, upon receipt of said notice, and turn over all work product to the County. Upon said termination, Contractor shall be paid for all services rendered through the date of termination. This section also applies should the Milwaukee County Board of Supervisors fail to appropriate additional monies required for the completion of the Contract.

18. CONTINUITY OF SERVICE.

- A. Contractor recognizes that the services under this contract are vital to the County and must be continued without interruption and that, upon contract expiration or termination, a successor, either County or another contractor, may continue them. Contractor agrees to: (i) furnish phase-in training; and (ii) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. Contractor shall, upon Contractor's written notice: (i) furnish phase-in, phase-out services for up to 90 days after this contract expires or terminates for any reason; and (ii) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to County's approval. Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- C. Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

19. INDEPENDENT CONTRACTOR.

Nothing contained in this Contract shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Contractor or its successors or assigns. In entering into this Contract, and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.

20. SUBCONTRACTS.

Assignment of any portion of the work by subcontract must have the prior written approval of County.

21. ASSIGNMENT LIMITATION.

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

22. PROHIBITED PRACTICES.

- A. Contractor during the period of this contract shall not hire, retain or utilize for compensation any member, officer, or employee of County or any person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."

23. PUBLIC RECORDS.

Both parties understand that the County is bound by the public records law, and as such, all of the terms of this agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor hereby agrees that it shall be obligated to assist the County in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this agreement, whereupon the contractor shall then and in such event be obligated to indemnify, defend and hold the County harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Except as otherwise authorized by the County in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after receipt of final payment under this agreement.

24. TAXES.

Milwaukee County is exempt from Federal Excise Taxes and Wisconsin State Sales Taxes. Any billing submitted by Contractor should be without such taxes.

25. NON-CONVICTION FOR BRIBERY.

Contractor hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

26. CONFIDENTIALITY.

Contractor agrees that all work product and oral reporting shall be provided only to or as directed by the individual who is signing this Contract on behalf of the County department, below, and not any other person or entity, including any other County employee or official. Contractor further



agrees that, aside from obligations under the public records law as more fully described in Sec. 23 of this Contract and as determined in cooperation with the County, Contractor shall maintain all materials and communications developed under or relating to this Contract as confidential and shall disclose them only to or as directed by the individual who is signing this Contract on behalf of the County department, below. Contractor understands that breach of confidentiality, especially regarding information that is not subject to public records law disclosure, may harm or create liability for the County and may require Contractor to indemnify County as provided in Sec. 12 of this Contract.

27. NOTICES.

All notices with respect to this Contract shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand, or three days after posting via US Mail, to the party addressed as follows:

To Contractor:

Attn.:  
Address  
Address

To County:

Office for Persons with Disabilities  
Attn.: Tim Ochnikowski  
901 N. 9<sup>th</sup> Street, Room 307-B  
Milwaukee, WI 53233

Either party may designate a new address for purposes of this Lease by written notice to the other party.

28. MISCELLANEOUS.

This Contract shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin. This Contract constitutes the entire understanding between the parties and is not subject to amendment unless agreed upon in writing by both parties hereto. Contractor acknowledges and agrees that it will perform its obligations hereunder in compliance with all applicable state, local or federal law, rules and regulations and orders.

29. AUTHORIZATION.

The County has executed this Contract pursuant to action taken by its Board of Supervisors on \_\_\_\_\_, Resolution File No. \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day, month and year first above written.

Easter Seals Southeast Wisconsin

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name, Title

Milwaukee County Office for Persons with Disabilities

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Tim Ochnikowski, Director

*Approved with regards to County Ordinance Chapter 42:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Community Business Development Partners

*Reviewed by:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Risk Management

*Approved for execution:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporation Counsel

*Approved as to funds available  
per Wisconsin Statutes Section 59.255(2)(e):*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Comptroller

*Approved:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
County Executive

*Approved as compliant under Wis. Stats. § 59.42(2)(b)5, Stats.*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporation Counsel

## EXHIBIT C

### TERMS AND CONDITIONS

1. Cleanliness of Facilities. Contractor shall remove all trash from County facilities following an event and deposit such trash in the dumpsters provided outside County facilities.
2. Facility Guidelines. Contractor shall at all times follow the facility guidelines published at [http://county.milwaukee.gov/ImageLibrary/User/tochnikowski/RENTAL\\_GUIDELINES.pdf](http://county.milwaukee.gov/ImageLibrary/User/tochnikowski/RENTAL_GUIDELINES.pdf). These guidelines are updated periodically, and it is Contractor's obligation to ensure that it is adhering to the most recent version.
3. Programming Booklets. Contractor shall publish all programming booklets on time based on the schedule provided by the County's Disabilities Recreation Manager. Contractor shall provide drafts of programming booklets to the County's Disabilities Recreation Manager no later than 30 days prior to the required publication deadline.
4. Staffing Levels. Contractor shall use its best efforts to provide adequate staffing levels so that programs are staffed at maximum levels in the following order of priority: summer camp, dances, and community events. Contractor shall submit a proposed staffing plan for all programs to the Disabilities Recreation Manager no later than February 28, 2017.
5. Summer Camp Extensions. In the event Contractor offers an extension of summer camp programming beyond the traditional 6-week program, Contractor shall pay rent to the County for use of the Wil O Way facilities at market rates.
6. Damages to Facilities. Contractor is bound by the rules set forth in the County's facility rental application (available at <http://county.milwaukee.gov/ImageLibrary/User/tochnikowski/FacilityRentalApplication2016.pdf>), including, without limitation, provisions relating to damages to facilities. In the event Contractor is liable to County for damages to a County facility, and such damages have not been repaired or paid for within 30 days of written notice to Contractor from County of such damages, County reserves the right to offset payments to Contractor in the amount of the cost to the County to repair such damages.
7. Summer Camp Fees. Contractor shall forward payment to the County for summer camp fees no later than September 30 of each year. County has the right to offset any and all payments to Contractor in the event camp fees have not been paid to County by September 30.
8. Facility Rooms. Contractor shall have exclusive use of the rooms indicated on the attached map, although County shall have a right of access to those rooms at all times.
9. Staff Certifications. All of Contractor's staff shall be first aid and CPR certified. At least one staff member at each programming event shall be CPI/Behavioral certified. These certifications shall be indicated on the proposed staffing plan indicated in paragraph 4 above.
10. Summer Camp Pool Attendant. Contractor shall provide a pool attendant at each facility on a full time basis during summer camp.

