

RESOLUTION #17-435

Be It Resolved,
(Seal)

By the Township Council of Piscataway Township,
New Jersey, that:

WHEREAS, the Administration has recommended the renewal of a professional services contract for Employee Assistance Program for the Township with **RUTGERS BIOMEDICAL AND HEALTH SCIENCES - UNIVERSITY BEHAVIORAL HEALTHCARE ("RUTGERS")**; and

WHEREAS, **RUTGERS** has agreed to perform such professional services for the period January 1, 2018, to December 31, 2018, in an amount not to exceed \$8,765.61 pursuant to a contract proposal, a copy of which is attached hereto and made a part hereof; and

WHEREAS, the Township Council of the Township of Piscataway is of the opinion that such agreement is in all respects in the public interest; and

WHEREAS, **RUTGERS** has submitted proof that it is not subject to N.J.S.A. 19:44A-20.4 et seq.; and

WHEREAS, funds are available pursuant to certification # R-2017-96; and

WHEREAS, the New Jersey Local Public Contracts Law, specifically, N.J.S.A. 40A:11-1 et seq., requires that a resolution authorizing the award of a contract for professional and/or extraordinary unspecifiable services without competitive bids must be publicly advertised, the within contract being one for generally recognized professional and/or extraordinary unspecifiable services, as defined by statute;

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Piscataway as follows:

1. The Mayor and other appropriate officials be and the same are hereby authorized to enter into an agreement for services related to the Employee Assistance Program for the period January 1, 2018, to December 31, 2018, with **RUTGERS BIOMEDICAL AND HEALTH SCIENCES - UNIVERSITY BEHAVIORAL HEALTHCARE** in a sum not to exceed \$8,765.61; and

2. This contract is being awarded without competitive bids as a professional service under the provisions of the Local Public Contracts Law, more specifically addressed in the body of this Resolution; and

3. The final form of said contract for these services shall be subject to the review and approval of the Township Director of Law; and

4. Notice of this Resolution shall be published as required by law.

PROFESSIONAL SERVICES AGREEMENT (Client)

THIS AGREEMENT is entered into effective as of the latest date of signature of the parties below, by and between RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY, a body corporate and politic and instrumentality of the State of New Jersey, a public entity, on behalf of its RUTGERS BIOMEDICAL AND HEALTH SCIENCES ("RBHS")-UNIVERSITY BEHAVIORAL HEALTH CARE ("UBHC") ("University") with offices at 671 Hoes Lane West, Piscataway, New Jersey 08854 Township of Piscataway (hereinafter the "Client") with offices at 455 Hoes Lane, Piscataway, New Jersey 08854.

WITNESSETH:

WHEREAS, the Client (i) has the corporate power and authority, and the legal right to conduct the business in which it is currently engaged; (ii) is in compliance with applicable laws and regulations; and (iii) desires to utilize the professional services of UBHC;

WHEREAS, UBHC through its faculty and staff has the skills and ability to perform the requested professional services:

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and conditions herein, the parties agree as follows:

(1.0) Provision of Services

- (1.1) UBHC agrees to accept patients, subject to availability and other resources, referred by Client, and to provide care in a manner that meets accepted professional standards in the community as to quality of care, safety and efficiency.
- (1.2) UBHC shall not discriminate against any patient based on age, race, color, creed, religion, sex, sexual preference, national origin, health or handicap status, income level or on the basis that they are patients of a Health Benefit Plan. UBHC agrees to render employee assistance services to patients referred by Client in the same manner and in accordance with the same standards and with the same time availability as it offers to all other UBHC patients and consistent with existing medical, ethical and legal requirements for providing services to any patient.
- (1.3) The types and availability of services included are:
 - a) Basic employee counseling services (six-session model), including assessment, referral, short-term intervention, and follow up. Employees, dependents and members of the employees' households are eligible for these services.
 - b) Supervisor Training Sessions (including training materials)
 - c) Employee Orientation Sessions

- d) 24- hour 800 toll free access number
- e) Consultation to management regarding human resource problems or concerns
- f) Quarterly and annual utilization reports
- g) Consultation regarding the development of certain human resource policies, e.g. drug/alcohol testing, prevention of sexual harassment, etc.
- h) Employee Assistance Program promotional materials (posters, newsletters, topic letters, etc.)

(2.0) Billing and Payment

- (2.1) Client will pay UBHC \$32.83 per employee per year (PEPY) for all employee assistance services outlined in Section 1.3 above. With an employee count of 267, total annual fee for this contract period will be \$8,765.61. Client will provide UBHC with updated employee count on a quarterly basis.
- (2.2) UBHC will invoice Client quarterly for services provided. The invoice will reflect one-fourth of the annual amount. Payment shall be made within fifteen days of receipt of the invoice. Payment shall be mailed to the following address:

University Behavioral Health Care
PO Box 826999
Philadelphia, PA 19182-6999

(3.0) Term and Termination

- (3.1) The services required under this Agreement shall be from January 1, 2018 to December 31, 2018. Thereafter, this Agreement shall be automatically renewed for additional one (1) year terms unless either party provides to the other party at least sixty (60) days prior advance written notice of its intention not to renew this Agreement.
- (3.2) This Agreement can be terminated without cause at an earlier date by signed, mutual agreement in writing by both parties or upon thirty (30) days written notice by either party.
- (3.3) UBHC reserves the right to terminate this Agreement immediately if the Client fails to comply with the terms specified in Section 2.2 of this Agreement.
- (3.4) Either party may terminate this Agreement for cause as of the date specified in a written notice upon the occurrence of any of the following events:
 - (3.4.1) A bankruptcy, receivership, insolvency, reorganization, liquidation or other similar proceeding shall be instituted by or against a party for the dissolution of a party, whether voluntary or involuntary;
 - (3.4.2) The sale or transfer of substantially all of the property and/or assets of the Client;

(3.4.3) That either party's obligations under this Agreement are prohibited under the laws, regulations or other rulings of the United States, the State of New Jersey or government department or agency thereof, or any Court of competent jurisdiction;

(3.4.4) That either party has made a determination, upon advice of legal counsel, that it is prohibited from or will be penalized for proceeding with its obligation under this Agreement as a result of any likely proceedings of any governmental agency; or

(3.4.5) That either party has had any required or applicable license, accreditation, or certification limited, revoked, restricted or suspended;

(3.4.6) In the event either party defaults in any term or condition of this Agreement, the non-defaulting party shall provide written notice of the default to the defaulting party. The party in default shall have thirty (30) days to cure the default. If the default is not cured to the satisfaction of the non-defaulting party, this Agreement may be terminated as of the date the cure period ends.

(3.5) If this Agreement is terminated prior to the completion date referenced in this Paragraph, UBHC shall be entitled to payment for all work completed and in process as of the termination date.

(4.0) Miscellaneous

(4.1) The parties agree that they are not relying upon any promises, understanding, warranties, circumstances, conduct, negotiations, expectations, representations, or agreements, oral or written, express or implied, other than those expressly set forth herein; that this Agreement is a complete integration and constitutes the entire Agreement of the parties with respect to the subject matter hereof; that no amendments or other modifications of this Agreement shall be valid unless in writing and signed by an authorized officer of each party hereto; that this entire Agreement has been bargained for and negotiated; and the parties have read, understood and approved this Agreement in its entirety.

(4.2) This Agreement may be amended only by a written agreement executed by both parties.

(4.3) All notices, copies of notices or other communications required or permitted hereunder shall be written and personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by telecopy accompanied by simultaneous mailing by first-class mail, addressed to the parties at their registered addresses as follows:

To Client:

James J. Hercek
Director – Human Resources
Township of Piscataway
455 Hoes Lane
Piscataway, NJ 08854

James Clarkin, Esq.
Township Attorney

To UBHC:

Frank Ghinassi, PhD, ABPP
President and CEO
Rutgers University Behavioral Health Care
671 Hoes Lane West
Piscataway, New Jersey 08854

All notices shall be effective as of the date of delivery of personal notice or three (3) days after deposit of such notice in the United States mail, whichever is applicable.

- (4.4) This Agreement shall be deemed to have been executed in the State of New Jersey, and shall be governed by and construed in accordance with the laws of the State of New Jersey. The parties agree that any and all claims arising under this Agreement, or related thereto, shall be heard and determined either in the courts of the United States with venue in New Jersey, or in the courts of the State of New Jersey.
- (4.5) If any provision of this Agreement is held by a court of competent jurisdiction, or determined under applicable federal or state law to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect.
- (4.6) Except as otherwise provided in this Agreement, the parties hereto may not assign their rights, duties or obligations under this Agreement, either in whole or in part, without receiving the prior written consent of the other party. Any assignment made without consent of the other party shall be void and the non-assigning party shall not recognize any such assignment.
- (4.7) (4.7(a)): Client and Rutgers-UBHC each agree that in the event that “personal health information” (“PHI”) is to be “used” or “disclosed,” as these terms are defined in the Health Insurance Portability and Accountability Act (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HiTech Act”), directly or indirectly, the parties shall execute Rutgers standard Business Associate Agreement (“BAA”). In such cases, a copy of the BAA shall

be executed and attached hereto and it shall be made a part of this Agreement, as though fully set forth herein.

(4.7(b)): Client agrees that all proprietary and/or confidential information (other than PHI, which is discussed in Section 4.7(a)) communicated by Rutgers-UBHC to the Client, directly or indirectly, will be received by the Client in confidence. Client agrees to keep all such information confidential and to protect such information in accordance with federal and state law. This duty of confidentiality shall survive termination of this Agreement in accordance with law.

- (4.8) Client agrees to abide by University policy regarding Section 6032 of the Federal Deficit Reduction Act of 2005.
- (4.9) None of the provisions of this Agreement is intended to create nor shall be deemed or construed to create any relationship between the parties hereto other than that of independent entities contracting with each other solely for the purposes of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective officers, directors or employees, shall be construed to be the agent, employee or the representative of the other.
- (4.10) Client agrees to indemnify, hold harmless and defend UBHC, its officers, directors, trustees, employees, agents and independent contractors from and against any and all liabilities, governmental assessments, fines, interest or penalties, losses, damages, claims, causes of action, and expenses (including reasonable attorney's fees and disbursements), whether or not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of actions or failures to act by Client.
- (4.11) Client warrants that Client has at the time of execution of this Agreement adequate and appropriate professional and/or general liability insurance as well as worker's compensation insurance for all Client employees.
- (4.12) Any and all publicity and/or public announcements relating to this Agreement or the work products of this Agreement shall be reviewed and approved in writing by UBHC prior to release or distribution.
- (4.13) Neither party to this Agreement will discriminate under federal and New Jersey state law based on race, color, religion, sex, national origin or physical or mental handicap.
- (4.14) Both parties represent that no fee, commission, compensation, gifts or gratuity was paid or received regarding the solicitation of this Agreement, in contravention to N.J.S.A. 52:13D-13 et seq.

- (4.15) The parties to this Agreement do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:5-1 dealing with discrimination in employment in public Agreements, and the rules and regulations promulgated pursuant thereto, as the same may be amended or modified, are hereby made apart of this Agreement and are binding upon them.
- (4.16) Rutgers, The State University of New Jersey is an instrumentality of the State of New Jersey. As such, this Agreement incorporates the following Statement of Public Liability Insurance: Any agreement or arrangement signed and entered into on behalf of the State of New Jersey by a State official or employee shall be subject to the provisions of the New Jersey Tort Claims Act, *N.J.S.A. 59:1-1 et seq.* and the New Jersey Contractual Liability Act, *N.J.S.A. 59:13-1 et seq.* and the availability of appropriations. The State of New Jersey does not carry public liability insurance, but the liability of the State and the obligations of the State to be responsible for tort claims against its employees are covered under the terms and conditions of the New Jersey Tort Claims Act. The Act also creates a special self-insurance fund and provides for payment of claims against the State of New Jersey or against its employees whom the State is obligated to indemnify against tort claims which arise out of the performance of their duties. University shall provide for professional and general liability coverage insuring the University and its faculty, students and employees performing activities under this Agreement through this Program of Self-Insurance providing limits of coverage of \$1,000,000/\$3,000,000 on an occurrence type basis.

Nothing stated in this Agreement shall be construed to imply indemnification of any party by the University.

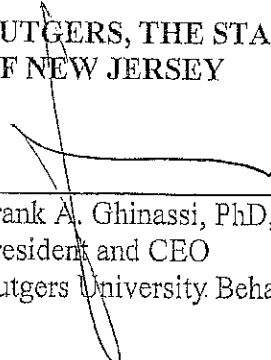
- (4.17) Compliance. In the performance of their obligations under this Agreement, the parties will comply with all applicable laws and regulations. Without limiting the generality of the foregoing, the parties will observe and comply with the following provisions relating to the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b (b) (“Anti-Kickback Statute”), and the federal prohibition against physician self-referrals, set forth at 42 U.S.C. § 1395nn (“Stark Law”).
- a) Nothing contained in this Agreement will be construed to require any University faculty physicians to refer patients to the Entity, nor will the University track any referrals made by any University faculty physicians, nor will any compensation paid by the University to any University faculty physicians performing services under this Agreement be related to the volume or value of referrals by such University faculty physicians to the Entity and such compensation will be consistent with fair market value as determined in arms'-length transactions.
 - b) In no event will any payments, grants or other funding from the Entity to the University be based unlawfully, directly or indirectly, on the volume or value of referrals or other business generated between the parties.

- c) Notwithstanding anything to the contrary herein, all payments associated with this Agreement are intended to comply with the requirements of applicable New Jersey state laws, such as the Codey Law, N.J.S.A. § 45:9-22.4 et seq. (as it may be amended from time to time) and the regulations promulgated thereunder.
- d) Each party represents and warrants that it will not violate the Anti-Kickback Statute or the Stark Law, with respect to the performance of its obligations under this Agreement.
- e) To the extent that the compliance office of a party to this Agreement receives a report or otherwise has knowledge that an employee of the other party has or probably has violated the Anti-Kickback Statute, the Stark Law or the Federal False Claims Act with respect to the performance of its obligations under this Agreement, and the party believes such information to be reasonably credible, such party will report the probable violation to the compliance office of the other party.

(4.18) Client warrants that it is now and will remain, at all times under the terms of this Agreement, capable of providing the services and performing the duties contemplated herein and that it is not a "Sanctioned Person or Entity" as that term is defined under applicable federal and state law. Client authorizes Rutgers-UBHC to search all applicable databases to verify that Client is not a "Sanctioned Person or Entity". In case of breach of this provision by the Client, Rutgers-UBHC shall have available to it all relief and remedies under law.

Agreed and accepted by:

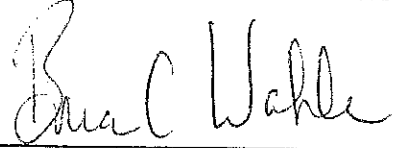
RUTGERS, THE STATE UNIVERSITY
OF NEW JERSEY



Frank A. Ghinassi, PhD, ABPP Date
President and CEO
Rutgers University Behavioral Health Care

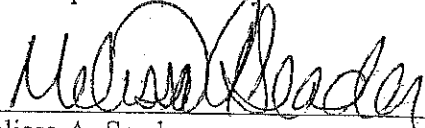
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TOWNSHIP OF PISCATAWAY



Brian C. Wahler
Mayor
Township of Piscataway

10-31-17



Melissa A. Seader
Township Clerk

Date

10-31-17