

ORDINANCE NO. 03-52 AC CMS

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO
A CONTRACT WITH THE PARTNERSHIP OF SYLVESTER MURRAY AND ALAN C.
WEINSTEIN OF CLEVELAND, OHIO, FOR PROFESSIONAL SERVICES AND DECLARING
AN EMERGENCY**

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain,
State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized and directed to enter into an agreement with the partnership of Sylvester Murray and Alan C. Weinstein of Cleveland, Ohio, for consulting services for the City of Oberlin in relation to the establishment of a race-neutral Small Business Program, a copy of the contract being attached hereto as Exhibit A, in the amount of \$66,000.

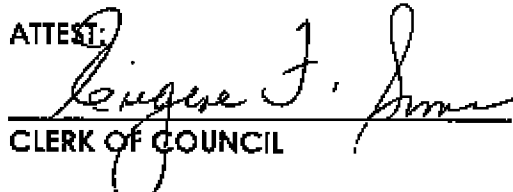
SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operations of a municipal department, to wit:

"to authorize necessary consulting services to assist the City with its efforts to establish a race-neutral Small Business Program at the earliest possible date in order to ensure their participation in City contracting opportunities" and shall take effect immediately upon passage.

PASSED: 1st Reading - July 14, 2003
2nd Reading - August 18, 2003 (E)
3rd Reading -

ATTEST:


CLERK OF COUNCIL


CHAIR OF COUNCIL

POSTED: August 19, 2003

EFFECTIVE DATE: August 19, 2003

**PROPOSED CONTRACT FOR PROFESSIONAL SERVICES WITH THE
PARTNERSHIP OF SYLVESTER MURRAY AND ALAN C. WEINSTEIN**

In consideration of the mutual promises herein, THE CITY OF OBERLIN and the PARTNERSHIP OF SYLVESTER MURRAY AND ALAN C. WEINSTEIN agree as follows. This contract consists of:

- A. Part I, consisting of 12 sections of General Provisions;
- B. Part II, consisting of 11 sections of Special Provisions;
- C. Appendix A consisting of 1 page; and
- D. Appendix B consisting of 2 pages

**PART I
GENERAL PROVISIONS**

Section 1. Definitions.

In this contract:

- A. "Administrator" means the Oberlin City Manager or his designee.
- B. "Oberlin" means the City of Oberlin, Ohio.
- C. "Contractor" means the Partnership of Sylvester Murray and Alan C. Weinstein.

Section 2. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent contractor of Oberlin. Oberlin may administer the contract and monitor the Contractor's compliance with its obligations hereunder. Oberlin shall not supervise or direct the Contractor other than as provided in this section.

Section 3. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, or marital status or who is a "qualified individual with a disability" (as that

phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- B. The Contractor shall state, in all solicitations or advertisements for employees to work on contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all nondiscrimination reporting requirements that may apply to it that Oberlin has in place or may establish
- D. The Contractor shall include the provisions of subsections A through C of this section in every subcontract or purchase order under this contract so as to be binding upon every such subcontractor or vendor of the Contractor under this contract.
- E. The Contractor shall comply with all applicable federal, state and local laws concerning the prohibition of discrimination.

Section 4. Permits, Laws and Taxes

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this contract. All actions taken by the Contractor under this contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this contract.

Section 5. Nonwaiver.

The failure of either party at any time to enforce a provision of this contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof

Section 6. Amendment.

- A. This contract shall only be amended, modified or changed in writing, executed by authorized representatives of both of the parties, with the same formality as this contract was executed. In the case of Oberlin, any amendment, modification or change must be approved by the Oberlin City Council
- B. For the purposes of any amendment, modification or change to the terms and conditions of this contract, the only authorized representatives of the parties are:

Contractor: Alan C. Weinstein and Sylvester Murray

Oberlin: Oberlin City Manager or his designee

- C. Any attempt to amend, modify, or change this contract by either an unauthorized representative or unauthorized means shall be void.

Section 7. Jurisdiction: Choice of Law.

Any civil action arising from this contract shall be brought in the Lorain County Court of Common Pleas in Elyria. The law of the State of Ohio shall govern the rights and obligations of the parties under this contract.

Section 8. Severability.

Any provision of this contract deemed invalid by a court of competent jurisdiction shall not invalidate the remaining portions of the contract.

Section 9. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 10. Insurance.

- A. The Contractor shall maintain in good standing the insurance coverage described in paragraph B of this section. Before rendering any service under this contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with paragraph B of this section in the form requested by the Administrator
- B. The Contractor shall maintain the following insurance:
 - 1. Workers' Compensation as required by Ohio law.
 - 2. Automobile Liability per occurrence in the amount of \$500,000.
 - 3. Comprehensive General Liability in the amount of \$1,000,000 to include:
 - a. Broad Form Property Damage
 - b. Independent Contractors
 - c. Personal Injury
- C. The Contractor shall provide no less than thirty (30) days notice to the Administrator prior to cancellation and/or change of any insurance required in paragraph B of this section.
- D. With the exception of Workmen's Compensation, each policy shall name Oberlin as an additional insured and the Contractor shall furnish to the Administrator a copy of the policy endorsement so-naming Oberlin.
- E. General Liability and Automobile policies shall be endorsed to waive all rights of subrogation against Oberlin by means of any payment made for claims under the above coverage and the Contractor shall furnish to the Administrator a copy of the policy endorsement showing such waiver.

Section 11. Liability.

- A. Contractor shall indemnify, defend, save and hold Oberlin harmless from any and all claims, lawsuits, or liability, including attorney's fees and costs, arising out of, in connection with, or incident to, any loss, damage or injury to persons or property or from any wrongful or negligent act, error, or omission of Contractor, Contractor's agents, employees, subcontractors or invitees, occurring during the course of, or as a result of Contractor's, Contractor's agents, employees, subcontractors or invitees performance pursuant to this contract.
- B. Contractor shall not be required to indemnify, defend, save and hold Oberlin harmless from any and all claims, lawsuits, or liability, including attorney's fees and costs, arising out of, in connection with, or incident to, any loss, damage or injury to persons or property or from any wrongful or negligent act, error, or omission of Oberlin, Oberlin's agents, employees, subcontractors or invitees.
- C. Responsibility for all claims, lawsuits, or liability, including attorney's fees and costs, resulting from injuries or damage sustained by any person or property arising from the wrongful or negligent acts of both Oberlin and the Contractor which result from the joint negligence of Contractor and Oberlin shall be apportioned on the basis of comparative fault to the extent permitted by law

Section 12. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as Oberlin may deem necessary, make available to Oberlin for examination all of its records with respect to all matters covered by this contract for a period ending one (1) year after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit to Oberlin such other information and reports relating to its activities under this contract in such form and at such times as Oberlin may reasonably require. The Contractor shall permit Oberlin to audit, examine and make copies of such records, and to

make audits of all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by this contract. Oberlin may, at its option, permit the Contractor to submit its records to Oberlin in lieu of the retention requirements of this section.

Section 13. Availability of Funds.

Sixty-six Thousand dollars (\$66,000) has been appropriated for this contract. Oberlin shall not be obligated to make payments in addition to those identified in Appendix B unless this contract has been amended to provide for additional payments.

PART II
SPECIAL PROVISIONS

Section 1. Definitions.

In this contract:

- D. "Administrator" means the Oberlin City Manager or his designee.
- E. "Oberlin" means the City of Oberlin, Ohio.
- F. "Contractor" means the Partnership of Sylvester Murray and Alan C. Weinstein.

Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this section by reference.
- B. Oberlin shall not allow any claim for services other than those described in this section; however, the Contractor and Oberlin may mutually agree in writing that the Contractor will perform any other services that are consistent with this contract.

Section 3. Time for Performance.

- A. This contract becomes effective when approved by the Oberlin City Council and signed on behalf of Oberlin.
- B. The Contractor shall commence performance of the work described in Section 2 on or about _____ and complete that performance no later than _____.

Section 4. Cooperation in Performance.

Oberlin will designate one of its employees to be Oberlin's lead liaison with the Contractor for the duration of this contract. The lead liaison will advise other Oberlin personnel of the need to cooperate fully and in a timely manner with all reasonable and timely requests related to obtaining information about Oberlin's operations, practices, procedures and policies relating to the subject matter of this contract. Such requests include, but are not limited to responding to written and oral requests for relevant information and participating in interviews, meetings and conferences. Oberlin and Contractor acknowledge that meeting the suggested timelines in the Flowchart attached to Appendix A will require full and timely cooperation between Oberlin and the Contractor.

Section 5. Compensation: Method of Payment.

- A. Subject to the Contractor's satisfactory performance, Oberlin shall pay the Contractor no more than Sixty-six Thousand dollars (\$66,000) in accordance with Appendix B, which is attached hereto and incorporated in this section by reference.
- B. The Contractor shall regularly submit Invoices to the City Manager, beginning a minimum of thirty (30) days from the effective date of this contract and continuing thereafter at minimum intervals of thirty (30) days, describing the work for which it seeks payment and documenting expenses and fees. If the City Manager determines that any documentation of fees and expenses is insufficient to allow for payment of the Invoice, the City Manager must notify the Contractor within ten (10) days of the receipt of the Invoice and set forth, with reasonable specificity, what documentation was insufficient and why.

- C. The hourly rate for services provided under this contract by Alan Weinstein or Sylvester Murray personally is One Hundred Fifty Dollars (\$150.00). The hourly rates for services provided under this contract by employees or associates of the Contractor are: Seventy-Five Dollars (\$75.00) for professional or managerial services and Thirty Dollars (\$30.00) for clerical or secretarial services.
- D. Monthly Invoices shall include all normal business expenses associated with the performance of this contract. These expenses include, but are not limited to, the actual costs to the Contractor for: long-distance telephone and telefacsimile charges, postage, photocopying, printing, audio and/or video recordings, and the use of a personal automobile for travel between Oberlin, Ohio and the owner's place of business or residence to be billed at the then-current mileage rate allowed by the IRS for business use of a personal automobile plus any applicable toll charges.
- E. Oberlin shall furnish payment in full to the Contractor in a timely manner for each Invoice submitted to the Administrator. For the purposes of this contract, "timely manner" shall mean within thirty (30) calendar days, unless a bona fide dispute arises between the parties regarding a specific Invoice or Invoices.
- F. The Contractor is not entitled to any compensation under this contract other than as expressly provided for in this section.

Section 6. Termination of the Contractor's Services.

The Contractor's services under Section 2 may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Oberlin, provided that Oberlin notifies the Contractor in writing of its intent to terminate under this paragraph at least twenty-one (21) days prior to the effective date of the termination.

- C. For cause, by either party, where the other party fails in any material way to perform its obligations under this contract. Termination under this paragraph is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity, the grounds therefore, and the other party fails to cure the default within thirty (30) days after receiving the notice.

Section 7. Duties Upon Termination.

- A. If Oberlin terminates the Contractor's services for convenience, Oberlin shall pay the Contractor for its reasonable fees and expenses actually incurred in performing before termination. All finished and unfinished documents and materials prepared by the Contractor under this contract shall become the property of Oberlin.
- B. If the Contractor's services are terminated for cause, Oberlin shall pay the Contractor for its reasonable fees and expenses actually incurred in performing before termination, less any actual damages suffered by Oberlin because of the Contractor's failure to perform satisfactorily. Payment under this paragraph shall never exceed the total compensation allowable under Section 4. All finished and unfinished documents and materials prepared by the Contractor under this contract shall become the property of Oberlin.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under Paragraphs A or B of this section, it shall remit the excess to the City Manager within thirty (30) days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this section until the Contractor has delivered to the City Manager all documents, records, work product, materials and equipment owned and/or provided by Oberlin.
- E. If the Contractor's services are terminated for whatever reason, the Contractor is not entitled to and shall not claim any compensation under this contract other than that allowed under this section.

Section 8. Assignments.

Unless otherwise allowed by this contract or consented to in writing by the City Manager and approved by the Oberlin City Council, any assignment by the Contractor of its interest in any part of the contract or any delegation of duties under this contract shall be void, and any attempt by the Contractor to assign any part of its interest or delegate its duties under this contract without the written consent of the City Manager and approval by the Oberlin City Council shall give Oberlin the immediate right to terminate this contract for cause.

Section 9. Deliverable Products: Ownership, Publication, Reproduction and Use of Material

- A. Prior to, and as a condition of, completion of the contract, the Contractor will deliver the following products to Oberlin at the times shown in the Flowchart attached to Appendix A.
1. The text of all ordinances and regulations the Contractor has proposed be enacted or adopted by Oberlin, to be provided in both electronic and print formats.
 2. The text of all alterations in the operation of Oberlin departments and processes suggested by the Consultant, to be provided in both electronic and print formats.
 3. The text of the forms, manuals, training materials and other implementation materials the Contractor recommends be used by Oberlin, to be provided in both electronic and print formats.
 4. The text of all plans for outreach and technical assistance the Contractor recommends be used by Oberlin, to be provided in both electronic and print formats.

B Except as otherwise provided herein, all data, documents and materials produced by the Contractor for which the Contractor has been reimbursed by Oberlin under this contract shall be the property of Oberlin, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright under the laws of the United States.

Section 10. Notices.

Any notice required pertaining to the subject matter of this contract shall be sent via telefacsimile (fax) and also mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Oberlin: City of Oberlin
Office of the City Manager
85 South Main Street
Oberlin, Ohio 44074 FAX: 440-775-7208

Contractor: Alan C. Weinstein
2988 Carlton Road
Shaker Heights, Ohio 44122 FAX: 216-687-6881

and

Sylvester Murray
28 Brandywine Square
Euclid, Ohio 44143 FAX:

Notices are effective upon the earlier of receipt, proof of good transmission (telefacsimilies only), or five (5) days after proof of proper mailing.

Section 11. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach of this contract
- B. As used in this contract, force majeure is an act or event of substantial magnitude, beyond the control of the affected party, which affects the completion of this contract, including, without limitation:
 - 1. Any interruption, suspension or interference resulting solely from an act of Oberlin or the negligence of Oberlin not otherwise governed by the terms of this contract.
 - 2. Strikes or work stoppages.
 - 3. Any interruption, suspension or interference with the project caused by Acts of God, or acts of a public enemy, terrorism, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
 - 4. Order of a court, administrative agency or governmental office other than Oberlin.

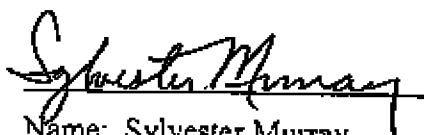
Section 12. Subcontracts.

The Contractor may enter into subcontracts for the purchase of goods and provision of services necessary for the performance of this contract provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefore.
- B. Every subcontract under which the Contractor delegates the provision of services under this contract shall be subject to review and approval by Oberlin before it is executed by the Contractor, provided that the approval of the Oberlin may neither be unreasonably delayed nor withheld absent reasonable cause.

- C. Every subcontract in an amount exceeding One Thousand dollars (\$1,000) shall provide for reasonable access by Oberlin, upon request, to business records of the subcontractor relating to the purchase of goods or provision of services pursuant to the subcontract.

CONTRACTOR:



Name: Sylvester Murray

Date: 9.3.03



Name: Alan C. Weinstein

Date: 9/3/03

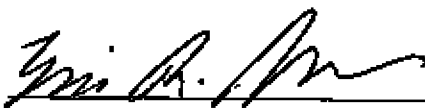
CITY OF OBERLIN.



Robert DiSpirito, City Manager

Date: 8/20/03

APPROVED AS TO FORM:



Eric R. Severs, City Solicitor

APPENDIX A
SCOPE OF SERVICES AND FLOWCHART

- A. The Contractor will design and oversee the implementation of a race-neutral Small Business Program in the manner and within the timeframes described in the Contractor Response to Oberlin's RFP submitted on August 9, 2001 and attached hereto as Attachment A.
- B. The estimated amounts of time required for Oberlin's lead liaison and other Oberlin personnel to perform the tasks described in Attachment A appear in the Flowchart attached hereto as Attachment B. These estimated amounts of time include an allowance of twelve (12) hours for formal meetings, conferences or hearings requested by Oberlin staff and/or elected officials or required by Oberlin's Charter, Ordinances or Codes. Any additional meetings beyond this allowance will constitute a request for additional services that are not included in this contract and will require that parties amend this contract.

ATTACHMENT B
FLOWCHART

Phase One: Planning

Tasks

1. Assess Oberlin's capacity to provide information and data required to implement the SBE, and possibly VSB, portions of the program and discuss possible capacity enhancements.
2. Assess Oberlin's capacity to provide various outreach and technical assistance mechanisms and discuss possible capacity enhancements.
3. Review and analyze Oberlin's procurement and contracting data to guide program design
4. Outreach to small business community and opportunity to express interests/concerns re: program design.
5. Reach agreement on program design and timetable for project based on level of personnel and resources Oberlin assigns to program.

Duration

60-90 days

Estimate of Oberlin Staff Time Required

Eight to ten (8-10) hours for Oberlin's lead liaison with Contractor and one to two (1-2) hours per person for representative of every Oberlin department that will be involved with the program as implemented

**Phase Two: Translate Policy/Design into Laws, Regulations
and Operational Changes**

Tasks

1. Draft legislation and regulations needed to implement programmatic elements as needed and submit to appropriate bodies for formal approval.
2. Agree on scope and timing of suggested alterations in operation of Oberlin departments and processes re: procurement and contracting.

3. Detailed planning for outreach and technical assistance portions of program.
4. Continue outreach to small business community.

Duration

90-120 days

Estimate of Oberlin Staff Time Required

Twenty to thirty (20-30) hours for Oberlin's lead liaison with Contractor, ten to twelve (10-12) hours for personnel from Law Department, and two to four (2-4) hours for other Department heads.

Phase Three: Implementation

Tasks

1. Prepare appropriate forms, manuals, and training materials.
2. Train Oberlin personnel in new or altered operations and/or equipment.
3. Communicate the requirements/opportunities of Oberlin's new policies, programs and procedures to affected constituencies and the public.
4. "Troubleshoot" the conversion process to insure that problems are identified and corrected expeditiously.

Duration

60-90 days

Estimate of Oberlin Staff Time Required

Twenty to thirty (20-30) hours for Oberlin's lead liaison with Contractor, ten to twelve (10-12) hours for personnel directly responsible for new or altered operations