

Misdemeanor Diversion Services for the Eleventh Judicial Circuit
Contract No. RFP851B

THIS AGREEMENT made and entered into as of this 01 day of March 2014 by and between **Court Options, Inc.**, a corporation organized and existing under the laws of the State of **Florida**, having its principal office at **17984 Franjo Road, Miami, FL 33157** (hereinafter referred to as the "Provider"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"), and the State Attorney's Office of the Eleventh Judicial Circuit of Florida, having its principal offices at 1350 NW 12th Avenue, Miami, Florida 33136 (hereinafter referred to as the "SAO").

WITNESSETH:

WHEREAS, the Provider has offered to provide misdemeanor diversion program services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No.851 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Provider has submitted a written proposal dated **March 27, 2013**, hereinafter referred to as the "Provider's Proposal" which is incorporated herein by reference; and,

WHEREAS, the SAO and the County desires to procure from the Provider such misdemeanor diversion program services for the SAO and the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No.851 and all associated addenda, and the Provider's Proposal.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The word "Days" to mean Calendar Days.
- e) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Provider to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- f) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- g) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- h) The word "Offender" to mean a person charged with breaking a public law, and who is a willing participant entering into a diversion agreement with the SAO.
- i) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Contract.
- j) The word "Provider" to mean **Court Options, Inc.** and its permitted successors and assigns.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Provider.
- l) The words "State Attorney's Office, Eleventh Judicial Circuit of Florida" to mean (SAO).
- m) The word "sub-contractor" or "sub consultant" to mean any person, entity, firm or corporation, other than the employees of the Provider, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Provider and whether or not in privity of Contract with the Provider.
- n) The word "Treatment Program" to mean a course of specialized treatment, either a)

required by the SAO as a condition of diversion, or b) determined to be necessary by the Provider as a result of the offender intake and evaluation process.

- o) The word "Treatment Program Provider" to mean a contract provider who provides courses and other treatment to offenders diverted from prosecution.
- p) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Provider in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No.851 and any associated addenda and attachments thereof, and 4) the Provider's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Provider shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County and the SAO in all aspects of the Services performed hereunder.
- c) The Provider acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Provider

shall perform the same as though they were specifically mentioned, described and delineated. Any material items omitted from this agreement shall upon their identification be reduced to writing and attached to this agreement in the form of a mutually executed contract amendment.

- d) The Provider shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the Project Manager.
- e) The Provider acknowledges that the County's Project Manager shall be responsible for making all policy decisions regarding the Scope of Services. The Provider agrees to provide input on policy issues in the form of recommendations. The Provider agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County's Project Manager. The Provider agrees to act in an expeditious and fiscally sound manner in providing the County's Project Manager with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on the date set forth on the first page and shall continue through the last day of the 36th month. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for an additional three years on a year to year basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Provider in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County, SAO and the Provider, upon approval by the Board of County Commissioners.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

- a) State Attorney's Office of the Eleventh Judicial Circuit
1350 NW 12th Avenue
Miami, Florida 33136

Attention: Ted Mannelli
Phone: (305) 547-0542
Fax: (305) 547-0779
E-mail: Tedmannelli@miamisao.com

and,

- b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Procurement Management Division

111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974

Attention: Assistant Director
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) To the Provider

c) Court Options, Inc.
17984 Franjo Road
Miami, FL 33157

Attention: George Romagosa
Phone: (305) 378-8122
Fax: (305) 378-8123
E-mail: gromagosa@courtoptions.org

Any party may at any time designate a different address and/or contact person by giving notice as provided above to the other parties. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Provider warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Provider deemed necessary in order to provide the Work and Services to be performed under this Contract. Payment for services shall be paid to the Provider as specified in Appendix A, Scope of Services, Section 8, Fees. The SAO and the County shall have no obligation to pay the Provider any sum for the Services.

All Services undertaken by the Provider before County's approval of this Contract shall be at the Provider's risk and expense.

ARTICLE 8. FEES

Refer to Appendix A, Scope of Services, Section 8, Fees for schedule.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

Refer to Appendix A, Scope of Services, Section 8, Fees.

Associated back-up documentation shall be submitted in duplicate by the Provider to the SAO as follows:

State Attorney's Office of the Eleventh Judicial Circuit
1350 NW 12th Avenue
Miami, Florida 33136
Attention: Ted Mannelli

The SAO may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Provider shall indemnify and hold harmless the County and SAO and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County, SAO or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Provider or its employees, agents, servants, partners principals or sub-contractors. The Provider shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County or SAO, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Provider expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Provider shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or SAO or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Provider shall furnish to the Internal Services Department, Procurement Management Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.
2. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.
3. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$250,000.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Provider. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County's Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the

expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Provider hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

Compliance with the foregoing requirements shall not relieve the Provider of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of recommendation to award. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Provider shall have an additional five (5) business days to submit a corrected certificate to the County. If the Provider fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Provider shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Provider shall be responsible for ensuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Provider shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Provider shall provide the Services described herein in a competent and professional manner satisfactory to the County and the SAO in accordance with the terms and conditions of this Agreement. The County and the SAO shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Provider in all aspects of the Services. At the request of the County or the SAO, and upon demonstration of reasonable cause the Provider shall promptly remove from the project any Provider's employee, subcontractor, or any other person performing Services hereunder. The Provider agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Provider.
- b) The Provider agrees to defend, hold harmless and indemnify the County and SAO and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County or SAO, occurring on account of, and upon demonstration of reasonable cause, arising from or in connection with the removal and replacement of any Provider's personnel performing services hereunder at the behest of the SAO or County. Removal and replacement of ~~any Provider's personnel as used in this Article shall not require the termination and or demotion of such Provider's personnel.~~
- c) The Provider agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified

professionals and other personnel to meet the requirements to which reference is hereinafter made. The Provider agrees to adjust its personnel staffing levels or to replace any of its personnel if so directed upon reasonable request from the County or the SAO, should the County or the SAO make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

- d) The Provider warrants and represents that its personnel have the proper skills, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Provider shall at all times cooperate with the County and the SAO and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Provider shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES OF THE PROVIDER

- a) All employees of the Provider shall be considered to be, at all times, employees of the Provider under its sole direction and not employees or agents of the County or the SAO. The Provider shall supply competent employees. The County or the SAO may require the Provider to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment is not in the best interest of the County or the SAO. Each employee shall have and wear proper identification.
- b) Pursuant to Section 2-2092 of the County Code, for all contracts for goods and services, the Provider, prior to hiring to fill each vacancy arising under this contract, shall make good faith efforts as determined by the County to fill a minimum of 50% of its employment needs under this contract through the South Florida Workforce Board, or other designated Referral Agency. If no suitable candidates can be employed after a Referral Period of three to five days, the Provider is free to fill its vacancies from other sources. Provider shall provide quarterly reports to the Referral Agency indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected.

ARTICLE 13. INDEPENDENT PROVIDER RELATIONSHIP

The Provider is, and shall be, in the performance of all work services and activities under this Agreement, an independent Provider, and not an employee, agent or servant of the SAO or the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Provider's sole direction, supervision and control. The Provider shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Provider's relationship and the relationship of its employees to the County shall be that of an independent Provider and not as employees and agents of the County or SAO.

~~The Provider does not have the power or authority to bind the County or SAO in any promise, agreement or representation other than specifically provided for in this Agreement.~~

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Provider hereby acknowledges that the County's Project Manager, or designee will in consultation with the other parties to the agreement determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Provider's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Provider shall be bound by all reasonable determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Provider agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Provider must, in the final instance, seek to resolve significant differences concerning the Agreement with the Project Manager. In the event that the Provider and the Project Manager are unable to resolve their difference, the Provider may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the Mayor and/or his designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The Mayor and/or his designee may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Provider's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Provider to the Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the Mayor is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Provider. Except as such remedies may be limited or waived elsewhere in the Agreement, Provider reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendices to the Agreement as enumerated herein and executed by the Clerk of the Board, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of all parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Provider, the County or SAO may, at its expense, elect to participate in the defense if the should so choose. Furthermore, the County or SAO may at its own expense defend or settle any such claims if the Provider fails to diligently defend such claims, and thereafter seek indemnity for costs from the Provider.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Provider shall maintain, and shall require that its sub-contractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Provider and its subcontractor and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The County, or its duly authorized representatives or governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Provider's books, documents, papers and records and of its subcontractor and suppliers which apply to all matters of the County and/or SAO. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Provider will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Provider agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowable and allocable of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Provider wishes to substitute personnel for the key personnel identified by the Provider's proposal, the Provider shall notify the SAO in writing and the SAO shall have 10 business days to object to the key personnel replacement. The Provider shall substitute the key personnel if, and only if, it has a reasonable basis to do so.

ARTICLE 19. CONSENT OF THE COUNTY AND SAO FOR ASSIGNMENT

The Provider shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written

consent of the County and SAO.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Provider will cause any part of this Agreement to be performed by a Sub-contractor, the provisions of this Contract will apply to such Sub-contractor and its officers, agents and employees in all respects as if it and they were employees of the Provider; and the Provider will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Sub-contractor, its officers, agents, and employees, as if they were employees of the Provider. The services performed by the Sub-contractor will be subject to the provisions hereof as if performed directly by the Provider.
- b) The Provider, before making any subcontract for any portion of the services, will state in writing to the County's Project Manager the name of the proposed Sub-contractor, the portion of the Services which the Sub-contractor is to do, the place of business of such Sub-contractor, and such other information as the County's Project Manager may require. The County will have the right to require the Provider not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Provider will inform the Sub-contractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Sub-contractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Sub-contractor satisfactory to the County and/or SAO, in addition to the other requirements herein provided, the Sub-contractor must be prepared to prove to the satisfaction of the County and/or SAO that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner.
- e) The County, SAO, and/or Provider shall have the right to withdraw its consent to a subcontract if it appears to the County, SAO, and/or Provider that the subcontract will delay, prevent, or otherwise impair the performance of the Provider's obligations under this Agreement. All Sub-contractors are required to protect the confidentiality of the SAO's and County's proprietary and confidential information. Provider shall furnish to the County and/or SAO copies of all subcontracts between Provider and Sub-contractor and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County and SAO in the event the County finds the Provider in breach of this Contract, permitting the County and/or SAO to request completion by the Sub-contractor of its performance obligations under the subcontract. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County or SAO to any sub-contractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Provider understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County and /or SAO were provided to the Provider for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County and/or SAO makes no representations or guarantees; and the County and/or SAO shall not be responsible

for the accuracy of the assumptions presented; and the County and/or SAO shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Provider. The Provider accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Provider may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.
- d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Provider.
- e) In the event that the County exercises its right to terminate this Agreement, the Provider shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the SAO's or County's materials and property;
- f) In the event that the County exercises its right to terminate this Agreement, the Provider will be compensated as stated in the payment Articles herein for the:
 - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
- g) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Provider. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:
- i. the Provider has not executed requirements as stated in Appendix A, Scope of Services;
 - ii. the Provider has refused or failed to supply enough properly skilled staff personnel;
 - iii. the Provider has failed to make prompt payment to sub-contractors or suppliers for any Services and has a judgment favoring the claimant;
 - iv. the Provider has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Provider's creditors, or the Provider has taken advantage of any insolvency statute or debtor/creditor law or if the Provider's affairs have been put in the hands of a receiver;
 - v. the Provider has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Provider has failed to provide "adequate assurances" as required under subsection b below;
- b) When, in the opinion of the County and/or SAO, reasonable grounds for uncertainty exist with respect to the Provider's ability to perform the Services or any portion thereof, the County may request that the Provider, within the timeframe set forth in the request, provide adequate assurances to the County and/or SAO, in writing, of the Provider's ability to perform in accordance with the terms of this Agreement. In the event that the Provider fails to provide to the County and/or SAO the requested assurances within the prescribed timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement; and
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data specifically relating to the performance of the services described herein.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County may so notify the Provider ("Default Notice"), specifying the basis for such default, and advising the Provider that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Provider to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Provider has commenced curing such

default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Provider shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Provider shall be liable for all damages resulting from the default, including but not limited to:

- a) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
- b) such other direct damages.

The Provider shall also remain liable for any liabilities and claims related to the Provider's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Provider shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Provider warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) The Provider shall be liable and responsible for any and all claims made against the County or SAO for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County and/or SAO continued use of the Deliverables furnished hereunder. Accordingly, the Provider at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County and/or SAO with respect to any claim, demand, cause of action, debt, or liability.
- d) In the event any Deliverable or anything provided to the County and/or SAO hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Provider shall have the obligation to, at the County's and/or SAO's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Provider's expense, the rights provided under this Agreement to use the item(s).
- e) The Provider shall be solely responsible for determining and informing the County and SAO whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable

hereunder. The Provider shall enter into agreements with all suppliers and subcontractors at the Provider's own risk. The County and SAO may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's and SAO's judgment, use thereof would delay the Work or be unlawful.

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County or SAO in connection with the Services performed under this Agreement, made or developed by the Provider or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County or SAO holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County or SAO, be used by the Provider or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County or SAO, unless required by law. In addition to the foregoing, all County or SAO employee information and County or SAO financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Provider nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Provider expressly agrees to be bound by and to defend, indemnify and hold harmless the County and SAO, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Provider shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County and SAO in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Provider agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County and SAO shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County and SAO, upon the completion of the Services performed hereunder, the Provider shall immediately turn over to the County and SAO all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Provider or its employees, agents, subcontractors or suppliers without the prior written consent of the County and SAO. A certificate evidencing compliance with this provision and signed by an officer of the Provider shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Provider acknowledges that all computer software in the County's and SAO's possession may constitute or contain information or materials which the County and SAO has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County and SAO has developed at its own

expense, the disclosure of which could harm the County's and SAO's proprietary interest therein.

The County and SAO acknowledge that all computer software in the Providers possession may constitute or contain information or materials which the Provider has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the Provider has developed at its own expense, the disclosure of which could harm the Provider's proprietary interest therein.

During the term of the contract, the Parties will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the Provider's, the County's and SAO's property, any computer programs, data compilations, or other software which the Provider, the County and SAO has developed, has used or is using, is holding for use, or which are otherwise in the possession of the Provider, County and SAO (hereinafter "Computer Software"). All third-party license agreements must also be honored by the providers and their employees, except as authorized by the Provider, County and SAO and, if the Computer Software has been leased or purchased by the County and SAO, all hired party license agreements must also be honored by the providers' employees with the approval of the lessor or Providers thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Provider will report to the County's Project Manager any information discovered or which is disclosed to the Provider which may relate to the improper use, publication, disclosure or removal from the Provider's, the County's and SAO's property of any information technology software and hardware and will take such steps as are within the Provider's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Provider hereby acknowledges and agrees that the County or SAO retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County or SAO to the Provider hereunder or furnished by the Provider to the County or SAO and/or created by the Provider for delivery to the County, even if unfinished or in process, as a result of the Services the Provider performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Provider as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Provider shall not, without the prior written consent of the County's Project Manager, use such documentation on any other project in which the Provider its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Provider to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's or SAO's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Provider and its subcontractors specifically for the County or SAO, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Provider nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Provider, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of

the County's Project Manager, except as required for the Provider's performance hereunder.

- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Provider and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Provider hereby grants, and shall require that its subcontractors and suppliers grant, if the County or SAO so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County, SAO or entities controlling, controlled by, under common control with, or affiliated with the County or SAO. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County or SAO for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County or SAO. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, Procurement Management Division, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

- | | |
|---|---|
| 1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the County Code) | (Section 2-8.9 of the County Code) |
| 2. Miami-Dade County Employment Disclosure Affidavit
(Section 2.8-1(d)(2) of the County Code) | 10. Miami-Dade County Domestic Leave and Reporting Affidavit
(Article 8, Section 11A-60 11A-67 of the County Code) |
| 3. Miami-Dade Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the County Code) | 11. Subcontracting Practices
(Ordinance 97-35) |
| 4. Miami-Dade Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the County Code) | 12. Subcontractor /Supplier Listing
(Section 2-8.8 of the County Code) |
| 5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the County Code) | 13. Environmentally Acceptable Packaging
(Resolution R-738-92) |
| 6. Miami-Dade County Vendor Obligation to County Affidavit
(Section 2-8.1 of the County Code) | 14. W-9 and 8109 Forms
(as required by the Internal Revenue Service) |
| 7. Miami-Dade County Code of Business Ethics Affidavit
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code) | 15. FEIN Number or Social Security Number
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes: |
| 8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 of the County Code) | |
| 9. Miami-Dade County Living Wage Affidavit | |

- Identification of individual account records
- To make payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. Office of the Inspector General
(Section 2-1076 of the County Code)

17. Small Business Enterprises

The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. Antitrust Laws

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Provider shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Provider's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Provider, its officers, agents, employees, sub-contractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Provider in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Provider or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Provider. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-

generating contracts; (l) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade SAO Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Provider, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Provider from the Inspector General or IPSIG retained by the Inspector General, the Provider shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Provider's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful sub-Contractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Provider agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including, but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) ~~Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.~~
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All Providers and sub-contractors performing work in connection with this Contract shall provide equal opportunity for

employment without regard to race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Provider agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

The Provider shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County, SAO or Provider for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Provider. The County's Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Provider prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, Provider shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Provider, constitute a violation of any law or regulation to which Provider is subject, including but not limited to laws and regulations requiring that Provider conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Provider agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Provider attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Provider or any owner, subsidiary or other firm affiliated with or related to the Provider is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Provider submits a false affidavit pursuant to this Resolution or the Provider violates the Act or the Resolution during the term of this Contract, even if the Provider was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Provider represents that:

- a) No officer, director, employee, agent, or other consultant of the County or SAO or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Provider in this Agreement. This Agreement is entered into by the Provider without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County or SAO, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Provider directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Provider or to the best of the Provider's knowledge any sub-Contractor or supplier to the Provider.
- c) Neither the Provider nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Provider shall have an interest which is in conflict with the Provider's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Provider provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Provider has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Provider shall promptly bring such information to the attention of the County's Project Manager. Provider shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Provider receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

The Provider shall not claim or imply in any press release, advertisement or literature of any kind that either the County or SAO endorses the Provider or any of its services. If for any reason the Provider desires to publicly communicate an endorsement by either the County or the SAO it must obtain the express written consent of the County or the SAO.

ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Provider has with the County, the Provider becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Provider under federal bankruptcy law or any state insolvency law.

ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

ARTICLE 39. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Provider, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Provider is free to fill its vacancies from other sources. Provider will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Provider performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.southfloridaworkforce.com/firstsource/>.

ARTICLE 40. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF A PUBLIC AGENCY

The Provider shall comply with the state of FL Public Records Law, s. 119.0701, F.S., specifically to: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (2) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Provider upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public

agency. If the Provider does not comply with a public records request, the public agency shall enforce contract provisions in accordance with the contract.

ARTICLE 41. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Provider and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Provider
By: [Signature]
Name: George Romagosa
Title: Vice President

Date: 10.22.13

Attest: [Signature]
Corporate Secretary/Notary Public

Corporate Seal/Notary Seal



Miami Dade County

By: [Signature]
Name: Carlos A. Gimenez

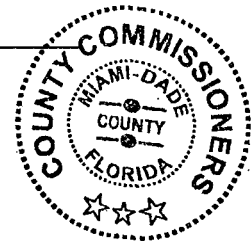
Title: Mayor

Date: 2/12/14

Attest: [Signature]
Clerk of the Board

Approved as to form and legal sufficiency

[Signature]
Assistant County Attorney



State Attorney's Office

By: [Signature]

Name: Don L. Horn

Title: Chief Assistant State Attorney for Administration

Appendix A Scope of Services

1. Background

The Florida Legislature has long recognized the need to identify and divert some offenders to specialized programs. Chapter 948, Florida Statutes, authorizes the State Attorney's Office and selected agencies to divert appropriate first-time offenders to diversion programs. One such program is the Misdemeanor Diversion Program (the Program), which offers qualified misdemeanor offenders an alternative to formal criminal prosecution. Each participant of the program signs a contract with the State of Florida which waives their right to a speedy trial, and in which they agree to comply with the Program requirements and perform specific sanctions. Participants are normally supervised for six to twelve months depending upon the offense. In return for successful completion of the program and listed sanctions, the State agrees to drop the participant's criminal charges in that specific case, which enables the participants to avoid a conviction. All referrals to the Program must originate with a recommendation by the SAO

Miami-Dade County, hereinafter referred to as "the County", on behalf of The State Attorney's Office, Eleventh Judicial Circuit of the State of Florida, hereinafter referred to as the "SAO", is contracting two firms to provide Misdemeanor Diversion Services for eligible offenders in the Criminal, and Traffic Divisions of the County Court of the Eleventh Judicial Circuit. Multiple contracts were awarded to provide management and supervision services for eligible offenders diverted from prosecution. Based on the average number of monthly intakes for cases in calendar year 2011, it is estimated that there are approximately 1,400 cases assigned monthly. The SAO makes no guarantee with respect to the actual number of assigned cases.

Currently, there are three misdemeanor diversion programs: 1) Regular Misdemeanor Crimes Diversion; 2) DUI Criminal Traffic (Back on Track Program); and 3) Miscellaneous Criminal Traffic. The Provider shall provide intake, evaluation, supervision, and monitoring of offenders in these diversion programs as well as other programs that may be developed during the life of the contract. The Programs will be funded solely through the payment of fees by offenders. The Provider may not invoice the County or the SAO for any services rendered, as neither the County nor the SAO will pay for the Programs operated by the Provider.

2. Preferred Qualification Requirement

The County has relied on the Provider's Proposal to determine that Provider has met the Preferred Qualifications. The Provider shall maintain such qualifications to the satisfaction of the County and SAO as follows:

- A. Provider shall have a minimum of five (5) years' experience in providing or operating misdemeanor diversion program services or similar related programs in the State of Florida or another similar sized jurisdiction.
- B. ~~Provider shall have the financial capacity to undertake, upon award, all new cases assigned by the SAO until fees are paid by the assigned offenders.~~

3. Assignment of Offenders

The number of offenders assigned to each Provider will be determined solely by the SAO. There are no minimum or maximum number of offenders that will be assigned to each Provider.

During the first six months of the initial three year contract term, the SAO will assign offenders equitably to the Providers. Thereafter, as the need arises, the SAO will determine the most effective and equitable method for assigning the offenders among the Providers. However, based upon, among other factors, the Provider's performance, the SAO reserves the right to adjust the number of offender assignments to attain the most advantageous results for the SAO and the offenders, in addition to developing an alternate streamlined process for assignment at any time.

4. General Requirements and Services to be Provided

The Provider shall:

- A) Provide adequate office space within Miami-Dade County, equipment, and supplies to provide diversion services as requested herein. The County Project Manager, designee, or representative of the SAO may visit the proposed office space at any time through the duration of this contract to ensure space is adequate to provide the required services.
- B) Comply with all federal and state laws, as well as applicable court orders, necessary to provide program services.
- C) Provide an annual financial disclosure of all owners or partial owners of the Provider's firm/entity.
- D) Provide an initial budget and financial statement showing that the Provider has sufficient finances on hand to provide the program services for six months after contract award.
- E) Have the capability to access the internet and to electronically transmit documentation as may be required by the SAO. The Provider shall maintain a functional e-mail address with the capability of receiving attachments, and shall provide said e-mail address to the County and SAO.
- F) Maintain written policies and procedures that direct the operation of the misdemeanor diversion program that shall include, at a minimum, the following:
 - 1) Mission statement;
 - 2) Intake and evaluation procedure;
 - 3) Termination policy;
 - 4) Record keeping and reporting procedure;
 - 5) Fee collections and remittance procedure;
 - 6) Acceptance of indigents procedure;
 - 7) Non-discrimination policy;
 - 8) Accessibility to persons with disabilities policy; and
 - 9) Other topics that may in the future be required by the SAO.

5. Background Screening

The Provider shall:

- A) Be required to run a criminal background check conducted by a Professional Background Screener for all Provider's officers, direct service personnel, or contracted personnel providing any of the required services to offenders, at the Provider's expense.
- B) Obtain a comprehensive report and analysis from no less than two independent databases/sources, on the nationwide criminal history of such officers, direct service personnel or contracted personnel. This background information shall be part of the background check report that shall be kept and maintained by the Provider and be available to law enforcement personnel upon request.
- C) Be required to, upon execution of the contract, provide the services and annually thereafter, to have all officers, direct service personnel employed or contracted by the Provider to undergo a Level 1 screening as defined in Section 435.03, Florida Statutes, as a condition of continued employment.
- D) Have direct service personnel or contracted personnel report to the Provider any subsequent arrest within 48 hours of such arrest, and the Provider shall notify the County and the SAO within 24 hours of its notification by personnel. Provider shall also notify the County and SAO of any officer, direct service personnel or contracted personnel convicted or found guilty, regardless of adjudication, or having entered a plea of *nolo contendere* to any felony or misdemeanor.

If any officer or employee of the Provider has criminal charges or warrants pending, the Provider shall notify the County and SAO and specify the name of the officer/employee, charges/warrants pending, and jurisdiction. The Provider shall not have as an officer or employee of the firm/entity an individual under any form of community supervision, including probation or pre-trial diversion.

6. Services To Be Provided To Offenders

The Provider shall act as a liaison between the County, SAO and Program offenders. As a liaison, the Provider, at a minimum shall:

- A) Monitor and supervise offenders for compliance with the terms of the Program.
- B) Receive and distribute all payments paid by the offenders. Ensure payments are received for all fees, required to be paid by the offender as a condition of diversion (refer to Section 2.8, Fees for additional information).
- C) Conduct the initial screenings of offenders referred by the SAO and evaluate their needs. The programs to which offenders are referred shall be required by the SAO or shall be based on the results of the Provider's intake evaluation and the offense for which the offender was charged and approved by the SAO. As part of the intake process, the Provider shall develop a plan with the offender specifying the dates by which conditions of diversion are to be met.

- D) Schedule a minimum of one monthly face-to-face contact meeting with offenders in the Program.
- E) Regularly review offenders' progress towards meeting all conditions of diversion, and counsel offenders as to the consequences of failure to meet the conditions.
- F) Provide offenders a choice of treatment program providers. At a minimum, the Provider shall provide each offender with the following information for each treatment program provider:
 - 1) All locations where treatment programs are offered;
 - 2) The hours of operation;
 - 3) The cost of each program; and
 - 4) Whether bilingual program staff is available at the location.
- G) Have, either on staff or on call, bilingual interpreters with verbal proficiency in Haitian Creole and Spanish, to assist offenders in understanding and meeting the conditions of their participation in diversion programs.
- H) Have flexible hours of operation, to include evenings, weekends, and holidays.
- I) Assist offenders in availing themselves of the full array of social services offered in the County, including employment placement, job training, substance abuse treatment, individual counseling, medical treatment, and similar services.
- J) Provide job placement services to unemployed or underemployed offenders. The Provider shall maintain accurate records that reflect:
 - 1) name and number of offenders who were unemployed/underemployed at the time of entry into the program, and
 - 2) name and number of offenders who were placed into employment during the duration of the program.

Note: The Provider shall encourage unemployed/underemployed offenders to improve their employability skills by recommending and assisting offenders in obtaining further schooling or job/technical training.

- K) Refer offenders to the SAO Community Outreach Unit (COU) for advice and counseling regarding the sealing and expunging of records. The role of the COU is to create better understanding that the role of the Office of the SAO is one of "doing justice." The SAO employs a two-pronged approach to crime-fighting and community safety. The first, and most traditional, prong is to remove dangerous criminals from our community; the second prong is to give everyone who is legally entitled to a chance at a better life the opportunity to do just that. The Florida Legislature has determined who is entitled to a sealing or expungement of their criminal record. Toward that end COU travels into the community to set up one-stop sealing and expungement workshops where thousands have been able to have their records sealed at no cost other than the Florida Department of Law Enforcement filing fee.

7. Services Required by the County and the SAO

The Provider shall:

- A) Maintain trained personnel capable of providing proper liaison assistance with the County and SAO.
- B) Designate a dedicated individual to respond to day-to-day matters. This individual shall be readily accessible to the County and the SAO, and shall be responsible for coordinating the resolution of issues that may arise.
- C) Maintain case records of each offender for at least five (5) years following termination of offender's participation in the Program.
- D) Follow-up and enforce all conditions of program participation. Priority shall be placed on offenders' timely payment of restitution. Any waiver by the SAO of any condition of diversion shall be noted in the offenders' case file.
- E) Monitor all offenders on a regular basis for subsequent arrests and violations of the conditions of diversion and report such arrests/violations to the SAO within 15 business days from the creation of the arrest record.
- F) File a Revoke/Non-Completion memorandum with the SAO recommending termination from program participation in the following circumstances:
 - 1) The direct violation of a court-ordered condition of program participation, except when non-payment of non-restitution fees is the sole violation.
 - 2) The re-arrest of an offender.
 - 3) The failure of an offender to comply with terms and conditions of diversion, except when non-payment of non-restitution fees is the sole failure to comply.
 - 4) The repeated failure of an offender to respond to written warnings notifying the offender of potential violations (e.g., group or class attendance, failure to report etc.).

8. Fees

The following fees are required to be paid by the offender and collected and distributed by the Provider. The Provider shall collect the fees and disburse as outlined below:

Diversion Program	Cost of Diversion Program	Disbursements
Misdemeanor Cases	No more than \$225 for offenders who agree to program participation prior to arraignment. No more than \$250 for offenders who are assigned to a program after arraignment.	To the Provider supervising the offender.
Traffic Cases	No more than \$150 and \$25 for each additional case to a maximum of \$200 per defendant.	To the Provider supervising the offender.
Back on Track (BOT)	No more than \$500 for Tier 1 supervision. (offenders with a blood alcohol level of less than .15) No more than \$650 for Tier 2 supervision. (offenders with a blood alcohol level of .15 or above or have refused breathalyzer test)	To the Provider supervising the offender.
Treatment Program	Amount to be determined by the Treatment Program provider.	To the Treatment Program Provider.
Restitution	Amount to be determined by SAO or ordered by Court.	To victims of the offender.
Denise Moon Fund	Amount to be determined by SAO.	To the Denise Moon Fund
Case Processing Fee	\$50	To SAO
Case Processing Fee	\$25	To Clerk of Court

- A) The Provider may waive or reduce fees for indigent offenders or offenders on any type of public assistance, except that the amount of restitution may not be waived or reduced without the concurrence of the SAO. If total fees are reduced, the amount for each specific fee in Section 2.8, Fees, (except restitution) shall be reduced proportionally. The inability of an offender to pay shall not be considered reason for denial of services to said offender, nor shall the inability of an offender to pay program fees be the sole reason for revocation of diversionary status. However, failure to pay restitution may be used as the sole reason for revocation of diversionary status. The Provider shall obtain written concurrence from the SAO to transfer uncollectible balances to a collection agency.
- B) The Provider shall distribute funds to recipients of those funds delineated above. Partial payments from offenders may be accepted, provided that monthly payments may be no less than the total amount owed divided by the length of the program in months and shall be distributed to each recipient in proportion to what they are owed compared to the total owed.
- C) The Provider shall be responsible for insufficient fund checks and charge backs.

- D) The Provider shall locate all victims, distribute restitution payments, and adequately document efforts to locate victims. In cases in which victims cannot be located, Funds shall be placed in an interest bearing account.

Note: One year after the final offender restitution payment is made, the Provider, with the concurrence of the SAO, may distribute unclaimed restitution payments with accumulated interest to the Denise Moon Fund unless mandated otherwise by Florida Statute.

- E) The Provider shall provide the following minimum internal control procedures:
- 1) Pre-numbered receipts for offenders and required supporting documentation.
 - 2) An automated accounting system in compliance with generally accepted accounting standards.
 - 3) Daily reconciliation of receipts and distributions.
 - 4) Policies and procedures that are in compliance with the Payment Card Industry (PCI), data security requirements when accepting credit card payments.
 - 5) Have designated personnel to accept payments.
 - 6) Contract with a Certified Public Accounting firm to perform annual financial reviews and testing of internal controls at The Provider's expense.

9. Records and Reports

The Provider shall:

- A) Provide the SAO with a monthly report or reports that shall include a summary of offenders in a format to be specified by the SAO with the following information:
- 1) Offender's name and address.
 - 2) Court case number(s)/Citation number(s), including incident dates.
 - 3) Charge description(s).
 - 4) Duration of diversion program.
 - 5) Anticipated date of program completion.
 - 6) Last date of contact.
 - 7) Fees imposed, paid and due.
 - 8) Restitution, paid and due.
 - 9) Offender making progress in complying with conditions of diversion (Yes/No).
- B) Make provisions to ensure that all records of the Provider shall be open to inspection upon the request of the County or the SAO.
- C) Starting with the second calendar year of the contract, annually select a cohort comprised of a minimum of 40 offenders from the previous calendar year (unless the SAO approves a lower number) who successfully completed their diversion. The Provider shall conduct a quarterly review and provide a report to the SAO in a format to be specified by the SAO indicating whether the selected offenders have been rearrested. Each annual cohort shall be tracked for a minimum of three (3) years.

- D) Provide to the County and the SAO an annual financial audit by a Certified Public Accountant paid for by the Provider, to include a listing of offenders who have exited the program showing the status of payments assessed and made.
- E) Annually, within 10 working days of March 31, June 30, September 30, and December 31, provide the SAO with a report in a format to be specified by the SAO containing the following information:
- 1) The number of unsuccessful terminations from the program during the preceding quarter and cumulative unsuccessful terminations during the calendar year.
 - 2) The number of successful terminations from the program during the preceding quarter and cumulative successful terminations during the calendar year.
 - 3) The total amount of restitution ordered for offenders assigned to the Provider.
 - 4) The total amount of restitution collected from offenders assigned to the Provider.
 - 5) The total amount of restitution distributed to victims from offenders assigned to The Provider.
 - 6) The total amount of fees (exclusive of restitution payments) by specific type ordered for offenders assigned to the Provider.
 - 7) The total amount of fees (exclusive of restitution payments) by specific type collected from offenders assigned to the Provider.
- F) Provide additional reports as may be requested by the SAO.

10. Performance Evaluation

The County or SAO will conduct an annual evaluation of the performance of the Provider. At a minimum, unsatisfactory evaluations will require a corrective course of action by the Provider, and may result in termination of the contract or form the basis for non-renewal of option years.

If the County or SAO requires a corrective course of action as a result of the annual evaluation, and the Provider cannot or will not comply, the contract may be terminated in accordance with Article 24, Event of Default of the contract.

11. Failure to Provide Additional Requested Service

The Provider shall provide additional services when requested by the SAO. However, if the Provider is unable to provide the services requested, the Provider shall notify the SAO verbally immediately and in writing with a detailed explanation of the reason for the inability to provide the requested services within 24 hours of the request. If the Provider refuses to accept the additional requested services, the Provider may forfeit their rights under the contract, and may be considered in default by the County in accordance with Article 24, Event of Default of the contract.