

Memorandum



Date: January 22, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

Agenda Item No. 8(F)(12)

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Approval to Award Misdemeanor Diversion Services

Recommendation

It is recommended that the Board of County Commissioners (Board) approve award of *RFP 851 Misdemeanor Diversion Services* to Advocate Program, Inc. and Court Options, Inc. to provide Misdemeanor Diversion Services for the Miami-Dade Office of the State Attorney, Eleventh Judicial Circuit (SAO). The awarded firms will administer misdemeanor diversion services for offenders in the Criminal and Traffic Divisions of the Eleventh Judicial Circuit County Court.

The Misdemeanor Diversion Program (Program) offers qualified offenders an alternative to formal criminal prosecution. Program participants sign a contract with the State of Florida waiving the right to a speedy trial and agreeing to comply with Program requirements and perform specific sanctions. Participants are normally supervised for six to 12 months depending on the offense. In return for successful completion of the Program, the State drops the participant's criminal charges enabling them to avoid a conviction. All referrals to the Program originate with a recommendation by the SAO.

There are three misdemeanor diversion services categories covered by the recommended contract: (1) Regular Misdemeanor Crimes Diversion; (2) DUI Criminal Traffic (Back on Track Program); and (3) Miscellaneous Criminal Traffic. The firms are to provide intake, evaluation and supervision of offenders in the Program, as well as other programs that may be developed during the life of the contract. Program services will be funded solely through the payment of fees by offenders.

Scope

This impact of this item is countywide in nature.

Fiscal Impact and Funding Source

The estimated contract value is \$30,000,000 for the initial three-year term. Individual offenders will pay established fees to the awardee for services rendered. There is no County or SAO funding allocated for this contract as all costs will be covered by the fees charged.

Track Record/Monitor

The Contract Manager for the SAO is Ted Mannelli. Pearl P. Bethel of the Internal Services Department is the Procurement Contracting Officer.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise, at their discretion, subsequent options-to-renew, early terminations, and extensions in accordance with the terms and conditions of the contract.

Vendor Recommended for Award

A Request for Proposals was issued under full and open competition on March 1, 2013. Six proposals were received. The Selection Committee recommended the two highest ranked firms for award. The SAO will assign the work equitably among the two firms.

Awardee	Address	Principal
Advocate Program, Inc.	1150 NW 72 Avenue, Suite 200 Miami, FL	David McGriff
Court Options, Inc.	17984 Franjo Road, Suite A Palmetto Bay, FL	George Romagosa

Vendors Not Recommended for Award

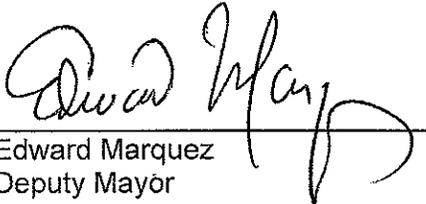
Proposers	Reason for Not Recommending
Judicial Correction Services, Inc.	Evaluation Scores/Ranking
Miami Dade Community Services, Inc.	
National Corrective Group, Inc. d/b/a Corrective Solutions	
Professional Probation Services, Inc.	

Due Diligence

Due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine awardee responsibility toward compliance of the contract, including verifying corporate status, and also that there are no known performance or compliance issues. The lists that were referenced include: convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to awardee responsibility. This information is being provided pursuant to Resolution R-187-12.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision does not apply.
- The Small Business Enterprise Bid Preference and Local Preference do not apply.
- The Living Wage Ordinance does not apply.



Edward Marquez
Deputy Mayor



Harvey Ruvin
CLERK OF THE CIRCUIT AND COUNTY COURTS
Miami-Dade County, Florida

CLERK OF THE BOARD OF COUNTY COMMISSIONERS
STEPHEN P. CLARK MIAMI-DADE GOVERNMENT CENTER
SUITE 17-202
111 N.W. 1st Street
Miami, FL 33128-1983
Telephone: (305) 375-5126

January 8, 2014

Eduardo S. Lombard, Esq.
Vezina, Lawrence & Piscitelli, P.A.
The Walker-Lee House
413 East Park Avenue
Tallahassee, Florida 32301

Re: Bid Protest – RFP No. 851
Misdemeanor Diversion Services
(Protester: Miami Dade Community Services, Inc.)

Dear Mr. Lombard:

Pursuant to Section 2-8.4 of the Code and Implementing Order 3-21, forwarded for your information is a copy of the Findings and Recommendation filed by Attorney Marc Anthony Douthit, Hearing Examiner, in connection with the foregoing bid protest hearing which took place on December 23, 2013.

Should you have any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,
HARVEY RUVIN, Clerk
Circuit and County Courts

By 
Christopher Agrippa, Division Chief
Clerk of the Board Division

CA/fcd
Attachment

Eduardo S. Lombard, Edq.
Vezina, Lawrence & Piscitelli, P.A.
Page Two
January 8, 2014

cc: Honorable Chairwoman Rebeca Sosa and
Members, Miami-Dade County Board of County Commissioners (via email)
Honorable Carlos A. Gimenez, Mayor, Miami-Dade County (via email)
R.A. Cuevas, County Attorney (via email)
Hugo Benitez, Assistant County Attorney (via email)
Oren Rosenthal, Assistant County Attorney (via email)
Jenelle Snyder, County Attorney's Office (via email)
Rita Gonzalez, County Attorney's Office (via email)
Ginny Bass, County Attorney's Office (via email)
Charles Anderson, Commission Auditor (via email)
Elizabeth Owens, BCC Legislative Analyst, Commission Auditor's Office (via email)
Lester Sola, Director, Internal Services Department (via email)
Edward Marquez, Deputy Mayor (via email)
Miriam Singer, CPPO, Assistant Director, Internal Services Department (via email)
Amos Roundtree, Director, Purchasing Department, Internal Services Department (via email)
Walter Fogarty, Manager, Procurement Vendor Services, Internal Services Department (via email)
Ray Baker, Assistant to the Director, Internal Services Department (via email)
Pearl P. Belhel, Procurement Contracting Officer 2, Internal Services Department (via email)
Advocate Program, Inc.
Court Options, Inc.
Judicial Correction Services
National Corrective Group, Inc. d/b/a Corrective Solutions
Professional Probation Services, Inc.
Miami Dade Community Services, Inc.

CLERK OF THE BOARD

2014 JAN -8 AM 9: 41

CLERK, CIRCUIT & COUNTY CLERK
MIAMI-DADE COUNTY, FLA.
#1

DOUTHIT LAW, LLC
6255 Miami Lakes Blvd.
3rd Floor
Miami Lakes, FL 33014
(786) 594-3977 (305) 503-9633 Fax

December 31, 2013

TO: Clerk of the Board
FROM: Marc Anthony Douthit, Esq.
RE: Bid Protest--Project No. 851 Misdemeanor Diversion Services

MEMORANDUM OPINION AND RECOMMENDATION

This matter came before this Hearing Examiner on December 23, 2013 on the Bid Protest of Miami Dade Community Service, Inc.'s (MDCS), protesting Miami-Dade County's Recommendation of Award, dated November 25, 2013, for the award of Project Number 851 to provide Misdemeanor Diversion Services (RFP) to the successful bidders, the Advocate Program, Inc. (Advocate Program) and Court Options, Inc. (Court Options). Both the Advocate Program and Court Options sought leave to intervene in this matter arguing that the outcome of these proceedings could fundamentally affect their interests in the outcome of the Request for Proposal.¹ Counsel for MDCS argued that the intervention of the Advocate Program and Court Options was improper since the Miami-Dade County Code does not specifically provide for the intervention of third parties and the successful bidders should not be heard in this matter. In other contexts,

intervention is found to be appropriate when the fundamental interest of a party is affected by the outcome of the proceedings *Barnhill v. Florida Microsoft Litigation*, 905 So.2d 195, 199 (3rd DCA 2005). Under these circumstances, I believe that allowing intervention is a reasonable position to take since to do otherwise would render the intervenors spectators to proceedings that could change the outcome of the RFP award and they would be powerless to participate. There is little doubt that both the Advocate Program and Court Options have fundamental interests which are affected by the outcome of these proceedings as such, their intervention in these proceedings.

In the final analysis, the participation of the Advocate Program and Court Options had little impact on the outcome of these proceedings and this opinion and recommendation. Their positions were and are in alignment with the Office of the County Attorney and they both adopted the arguments set forth by the County Attorney's office. The County Attorney's position, when juxtaposed against the arguments set forth by MDCS, provided a more than adequate basis to ascertain the facts and render this opinion and make this recommendation.²

The protestor was represented by Eduardo Lombard, Esq.; the County Attorney was represented by Oren Rosenthal, Esq. and Suzanne Villano, Esq.; The Advocate Program was represented by H.T. Smith, Esq.; and Court Options was represented by

¹ Since MDCS is arguing that the entire RFP process in this case was fundamentally flawed and ought to be thrown out, the outcome of these proceedings could completely extinguish the interests of both the Advocate Program and Court Options.

² Throughout this Opinion and Recommendation, references to arguments made by the Respondent (County Attorney) and the Intervenors (Advocate Program and Court Options) will generally be attributed to the County Attorney since the arguments made by the Intervenors, while they may have slight

Eduard Lacasa, Esq. All parties had representatives of their respective entities and agencies present at the hearing, however no party called any witnesses and no testimony of any witnesses was taken or solicited.

The Protestor provided the Hearing Officer with a CD of documents as exhibits to its Formal Notice of Protest. The County Attorney submitted a Response with exhibits and on the day of the hearing, the Protestor provided an additional CD of documents as exhibits, which were received by them pursuant to their Public Records Request after their initial submission of the Bid Protest. To the extent that the documents attached as exhibits are part of the public record, they were received into the record as evidence to be considered in this matter. In addition, the Protestor, as part of its presentation, made reference to certain specific documents it used to illustrate specific issues and those documents are attached to the Hearing Transcript of these proceedings as exhibits.

The protestor attempted to enter into evidence, an affidavit of a witness who was not present at the Bid Protest Hearing. The Affidavit purported to assert that there were known problems with the incumbent Advocate Program's operation of the existing Misdemeanor Diversion program and these problems were ignored by the Selection Committee. This affidavit was disallowed and is not considered in the analysis of this Opinion and Recommendation.

First, it was presented for the first time at the Bid Protest Hearing. Second, the information contained within the Affidavit would require this Hearing Officer to draw

differences in emphasis and interpretation they are not so fundamentally different as to need to be addressed separately.

conclusions as to whether the individual members contemplated the incumbents current operations and why members of the Selection Committee scored a particular bidder a certain way. I am unwilling to attempt to draw any conclusions about the motivation or thought process that went into the scoring.

STANDING

Whether MDCS has standing to maintain this protest has been raised in two different contexts. In the first instance, the Intervenor's argue that MDCS should have indicated its objection to their having been eliminated from consideration at the moment they were actually eliminated from consideration. They argue that this point was actually at the time MDCS was not invited to make an oral presentation. MDCS argues that the Miami Dade County Code provides a single point in time at which it could file a protest. That point is after the award and recommendation is issued by the County. Using that as the date that the "clock" begins to run, MDCS' protest was timely filed and whatever vested interest they had in the outcome of these proceedings was maintained up to the point of the Notice of Intent to Award dated November 25, 2013.

In response to a question posed by the Hearing Officer, the County Attorney argued that MDCS had no Standing because the behaviors that MDCA asserts forms the underlying basis for their Bid Protest took place after MDCS was already eliminated from consideration and thus ineligible for the receipt of the award of the bid. Arguing in effect that since MDCS was scored so low in the initial phase of the evaluation of their proposal, they were not invited to make an oral presentation before the Selection

Committee and since Selection Committee had already removed MDCS from consideration MDCS had no more interest in the outcome of the deliberations.³

In response, MDCS argues that the information which forms a large portion of the substantive basis for its Bid Protest only became known after MDCS was not invited to make an oral presentation, but took place prior to that point. And that those behaviors of the selection committee evidenced their bias during the earlier part of the selection process and may have been the reason for their low scoring. It would have been impossible to protest something that it had no way of knowing existed.

From a procedural standpoint, I find that the Bid Protest filed by MDCS was timely and keeping with the language of the Miami-Dade County Code. The record indicates that MDCS' Notice of Intent to Protest was filed within the five (5) day period following the issuance of the Notice of Intent to Award. There is nothing either within the language of the RFP itself or the Miami Dade County Code that would require MDCS to submit either a Notice of Intent or an actual Bid Protest prior to the Notice of Intent to Award.

The second issue related to standing is more complicated. The question becomes, whether MDCS was already eliminated from consideration for an award prior to the oral presentations and further, whether that elimination from consideration prevents MDCS from moving forward with this Bid Protest.

³ The Advocate Program and Court Options also argue that in order for the MDCS Bid Protest to be timely, MDCS should have raised its issues at the time MDCS was not invited to make an oral presentation.

It is undisputed that MDCS was not invited to make an oral presentation; it is also undisputed that the most generous interpretation of the score sheets submitted by the Selection Committee ranked MDCS well below the top four (4) bidders who were invited to make oral presentations. It was because of this low ranking, MDCS was not among the four bidders invited to continue in the selection process and make an oral presentation.⁴

MDCS challenges the adequacy of the entire process, asserting bias on the part of at least one Selection Committee member and that bias fatally flawed the entire RFP process.⁵ While MDCS was not invited to make an oral presentation, they were never informed by the Selection Committee that not being asked to make the oral presentation was considered elimination. (*Hearing Transcript at page 108*). In fact, there appears to be some confusion as to the purpose of the oral presentations and what they meant in the overall scope of the RFP. (*Recording of the 4-15-13 Selection Committee Meeting*).

The County Attorney asserts that MDCS effectively knew it was eliminated because it was not invited to make a presentation.⁶ The language contained in the RFP supports this conclusion. Clearly, the most prudent course would be for the County to

⁴ The County Attorney, citing *Preston Carroll Company v. Florida Keys Aqueduct Authority*, 400 So.2d 524, 525 (Fla. 3d DCA 1981), asserts that MDCS did not have a substantial interest in the outcome, since it had already been eliminated. "In order to contest the award of a public contract to an apparent low bidder, appellant was required to establish that it had a "substantial interest" to be established by the agency. A second lowest bidder establishes that interest." *Preston Carroll* at 524.

⁵ Questions as to whether "Cone of Silence" or "Sunshine Law" violations occurred are not within the purview of this Hearing Officer to consider. The only question regarding the activities of the Selection Committee is not whether those activities may or may not have violated the Cone of Silence or Sunshine Law, but whether those actions impaired the selection process in such a way as to invalidate the RFP results.

have notified the bidders who were eliminated. The concept of a bidder having to surmise or glean their status from the circumstances surrounding their bid is not consistent with the underlying goals of an RFP or the Bid Selection process. A bidder has the right to have the goals and intentions of the County clearly defined.

The language of *Section 4.3* of the RFP states as follows:

"Upon completion of the technical criteria evaluation indicated above, rating and ranking, the Evaluation/Selection Committee may choose to conduct an oral presentation with the Proposers which the evaluation deems to warrant further consideration based on, among other considerations scores in clusters and/or maintaining competition. (See form A-2 regarding registering speakers in the proposal for oral presentations.) Upon completion of the oral presentations, the Evaluation/Selection Committee will re-evaluate, re-rate and re-rank the proposals remaining in consideration based upon the written documents combined with the oral presentation."
(See *Section 4.3 of the Request for Proposal*)

The language in the RFP indicates that the failure to be invited to make an oral presentation was the equivalent to elimination from the Bid Process. Section 4.3 begins "Upon completion of the technical criteria evaluation....." This indicates that the first part of evaluation process had ended. Section 4.3 goes on to say that the Selection Committee "may choose" to conduct oral presentations with the proposers..... This suggests that the process could have been concluded without conducting oral presentations. Indeed, in the April 15, 2013 meeting of the Selection Committee, Pearl Bethel, the County Contracting Officer explains to the Selection Committee, that the oral presentations were not a mandatory part of the RFP, but optional to the Selection

⁶ Court Options takes this position as well, arguing that the context and the circumstances surrounding MDCS not being invited to make an oral presentation should have provided MDCS with sufficient notice that it had been eliminated. (*Hearing Transcript at page 111*).

Committee and the presentations were primarily for clarification purposes.⁷ The mandatory language of this Section 4.3 appears once the oral presentations occurred, then the Selection Committee "will re-evaluate, re-rate and re-rank the proposals remaining in contention based upon the written documents combined {emphasis added} with the oral presentation. The clear implication is that without participating in the oral presentations, a bidder could not be included in this component of the evaluation process since combining the oral presentation was mandatory to the next level of scoring.

The County could not have materially altered or ignored the language of the RFP, making an evaluation of the oral presentations a mandatory part of the final scoring once they occurred. The Selection Committee was bound to follow the rules as set forth in the bid documents. While the County has wide discretion in exercising its judgment over the contracting decisions, as a public body, the County is not entitled to omit or alter **material** provisions required by the RFP because in doing so the public body fails to "inspire public confidence in the fairness of the [RFP] process." *State, Dep't of Lottery v. Gtech Corp.*, 816 So.2d 648 (Fla. 1st DCA 2001). The rules in this case as articulated in the RFP, eliminated MDCS from further consideration, therefore making MDCS ineligible to receive the award.

Based upon the language of the RFP, I find that whatever interest MDCS had in the outcome of the Bid Selection process was extinguished as of the moment they were not invited to make an oral presentation. At the point of the oral presentations, the second part of the selection process involved only those bidders who were invited to

⁷ See recording of April 15, 2013 meeting of the Selection Committee.

make oral presentations. The failure to be invited to make an oral presentation, based upon the language of the RFP, meant that MDCS could not have been included in the mandatory re-scoring required under Section 4.3 of the RFP.⁸

However, since their challenge to the outcome of the bid process was not related to the scoring or ranking, but rather to the process itself, MDCS' interest as a bidder does give them standing to assert that the selection process was flawed. I agree with MDCS that a challenge to the selection process as a whole gives them the right to protest the outcome of the bid. As an unsuccessful bidder, if MDCS were to argue that they should be awarded the bid, it would require that MDCS assert that the higher ranked bids were inferior to their bid and MDCS should have been ranked high enough to be awarded the bid. *Capelletti Brothers, Inc. v Department of General Services*, 432 So.2d 1359, 1362. MDCS does not take this position.

UNFAIR AND FATALY FLAWED PROCESS

The issue of bias being interjected into the selection process involves MDCS' contention that Judge Tom Peterson, a voting member of the Selection Committee, unfairly favored the Advocate Program.⁹ Judge Peterson made clear he preferred a single provider for the entire program and he preferred that the provider be a non-profit entity. (See *Judge Peterson May 6, 2013 letter and Memorandum*). It should be noted

⁸ The impact of the re-evaluation and re-ranking is apparent in that the Advocate Program was ranked second before the oral presentations and first after the oral presentations.

⁹ There was some vague assertion regarding Judge Peterson's involvement as a founder of the Advocate Program. I accept the representation of the County Attorney that Judge Peterson has never had any involvement with the corporate entity, The Advocate Program which has intervened in this matter. Judge Peterson was one of the founders of the court system's advocate program.

that his undated Memorandum was directed to "Court Administration" and not to any party involved in the RFP Selection Process.

I do not think it reasonable to expect that any member of the Selection Committee who has had experience with the existing misdemeanor diversion program could completely overlook and ignore information they are personally aware of and experiences they have had with an incumbent provider, in their evaluation. This prior knowledge alone is not evidence of bias. Incumbency cuts both ways and is not in and of itself a predictor of a positive evaluation or ranking. The prior experiences can be positive and negative.

MDCS suggests that the April 20, 2013 letter from Judge Peterson evidences a bias in favor of the Advocate Program and against them as a for profit corporation. A review of Judge Peterson's communications and his open articulation of his preferences and priorities, are more in line with expressing concerns about issues he raised with having a certain type of vendor perform the work. (*See Judge Peterson Letter dated May 6, 2013*).¹⁰ This is quite different than championing the cause of a specific vendor. Every selection committee member either has a personal preference or is inclined to think a certain way about the evaluation criteria. One of the reasons the members of selection committee are chosen is because of their knowledge and experience of the issue covered by the RFP. Besides inferences that MDCS is asking me to draw, there is nothing in Judge Peterson's expressing his preferences for certain qualities and qualifications he

believes a successful bidder ought to have that evidences a bias towards a particular vendor.

Judge Peterson's score sheets, which are in the record, are consistent with the other members of the Selection Committee. While MDCS argues that this is evidence of Judge Peterson's undue influence over the other members of the Selection Committee, in order to order to accept that supposition, I would have to assume that the other members of the Selection Committee, which include members of the Office of the State Attorney, are so easily swayed as to be incapable of independent thought. I decline to make this assumption.

CONCLUSION

In the final analysis, in the absence of a finding that awarding the bid to the Advocate Program and Court Options is arbitrary and capricious, the award must be upheld. *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So.2d 505, 507 (Fla. 1982); *Scientific Games, Inc. v. Dittler Bros., Inc.*, 586 So.2d 1128,1131 (Fla. 1st DCA 1991) Even given the difficulties that were attendant to this RFP selection process, I find that the result of the selection process and subsequent award to the Advocate Program and Court Options was consistent with the requirements of the RFP . This certainly was not the perfect RFP selection process. However, I cannot find that Judge Peterson or anyone else involved in the process did anything improper with respect to the matters that are before me. A Perfect RFP selection process is not required. The County did not act

¹⁰ The target of most of Judge Peterson's attention appears to be Court Options. As a bidder who was the recipient of an award, Court Options concerns raised in their May 21, 2013 letter were not pursued and

fraudulently, arbitrarily, illegally or dishonestly. *Department of Transportation v. Groves-Watkins Constructors*, 530 So.2d 912, 914 (Fla. 1988). As such, whatever the actions were that contributed to the imperfections were not of such a magnitude as to create a selection process which was fatally flawed and anti-competitive.

Based upon the law and the facts brought forth in these proceedings the undersigned Hearing Officer recommends that the Notice of Intent to Award dated November 25, 2013 be upheld and that the bid for RFP 851-Misdemeanor Diversion Services be awarded to the Advocate Program and Court Options.



Hearing Officer

their concerns apparently alleviated. (See *Bid Protest hearing transcript at page 134*).



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: January 22, 2014

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(F)(12).

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(12)
1-22-14

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF AGREEMENTS WITH ADVOCATE PROGRAM, INC AND COURT OPTIONS, INC. FOR MISDEMEANOR DIVERSION SERVICES FOR THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AN AMOUNT NOT TO EXCEED \$30,000,000.00; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE CONTRACTS FOR AND ON BEHALF OF MIAMI-DADE COUNTY, TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN. CONTRACT NOS. RFP851A, AND RFP851B

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the execution of an agreements with Advocate Programs, Inc. and Court Options, Inc., in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and all other rights contained therein.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

	Rebeca Sosa, Chairwoman	
	Lynda Bell, Vice Chair	
Bruno A. Barreiro		Esteban L. Bovo, Jr.
Jose "Pepe" Diaz		Audrey M. Edmonson
Sally A. Heyman		Barbara J. Jordan
Jean Monestime		Dennis C. Moss
Sen. Javier D. Souto		Xavier L. Suarez
Juan C. Zapata		

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd
day of January, 2014. This resolution shall become effective ten (10) days after the date of its
adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an
override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Oren Rosenthal

Misdemeanor Diversion Services for the Eleventh Judicial Circuit
Contract No. RFP851A

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between **Advocate Program, Inc.**, a corporation organized and existing under the laws of the State of **Florida**, having its principal office at **1150 NW 72nd Avenue, Suite 200, Miami, FL 33126** (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 22, 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 **Advocate Program, 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) Advocate Program Inc.
1150 NW 72nd Avenue, Suite 200
Miami, FL 33126

Attention: M. David McGriff
Phone: (305)704-0109
Fax: (305)704-0199
E-mail: mdmphd@advocateprogram.com

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:

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. <i>Miami-Dade County Ownership Disclosure Affidavit</i>
(Section 2-8.1 of the County Code) 2. <i>Miami-Dade County Employment Disclosure Affidavit</i>
(Section 2-8-1(d)(2) of the County Code) 3. <i>Miami-Dade Employment Drug-free Workplace Certification</i>
(Section 2-8.1.2(b) of the County Code) 4. <i>Miami-Dade Disability and Nondiscrimination Affidavit</i>
(Section 2-8.1.5 of the County Code) 5. <i>Miami-Dade County Debarment Disclosure Affidavit</i>
(Section 10.38 of the County Code) 6. <i>Miami-Dade County Vendor Obligation to County Affidavit</i>
(Section 2-8.1 of the County Code) 7. <i>Miami-Dade County Code of Business Ethics Affidavit</i>
(Section 2-8.1(f) 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) 8. <i>Miami-Dade County Family Leave Affidavit</i>
(Article V of Chapter 11 of the County Code) 9. <i>Miami-Dade County Living Wage Affidavit</i> | <p>(Section 2-8.9 of the County Code)</p> <ol style="list-style-type: none"> 10. <i>Miami-Dade County Domestic Leave and Reporting Affidavit</i>
(Article 8, Section 11A-60 11A-67 of the County Code) 11. <i>Subcontracting Practices</i>
(Ordinance 97-35) 12. <i>Subcontractor /Supplier Listing</i>
(Section 2-8.8 of the County Code) 13. <i>Environmentally Acceptable Packaging</i>
(Resolution R-738-92) 14. <i>W-9 and 8109 Forms</i>
(as required by the Internal Revenue Service) 15. <i>FEIN Number or Social Security Number</i>
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: |
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- 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

Miami-Dade County

By: [Signature]
Name: M. DAVID McGRUFF

By: _____
Name: Carlos A. Gimenez

Title: CEO

Title: Mayor

Date: 10/22/13

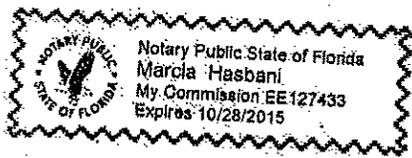
Date: _____

Attest: [Signature]
Corporate Secretary/Notary Public

Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form and legal sufficiency



Assistant County Attorney

State Attorney's Office

By: _____
Name: _____
Title: _____

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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.

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

THIS AGREEMENT made and entered into as of this _____ day of _____ 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)

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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.

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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

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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

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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

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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

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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

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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

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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:

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| <p>1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the County Code)</p> <p>2. Miami-Dade County Employment Disclosure Affidavit
(Section 2.8-1(d)(2) of the County Code)</p> <p>3. Miami-Dade Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the County Code)</p> <p>4. Miami-Dade Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the County Code)</p> <p>5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the County Code)</p> <p>6. Miami-Dade County Vendor Obligation to County Affidavit
(Section 2-8.1 of the County Code)</p> <p>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)</p> <p>8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 of the County Code)</p> <p>9. Miami-Dade County Living Wage Affidavit</p> | <p>(Section 2-8.9 of the County Code)</p> <p>10. Miami-Dade County Domestic Leave and Reporting Affidavit
(Article 8, Section 11A-60 11A-67 of the County Code)</p> <p>11. Subcontracting Practices
(Ordinance 97-35)</p> <p>12. Subcontractor /Supplier Listing
(Section 2-8.8 of the County Code)</p> <p>13. Environmentally Acceptable Packaging
(Resolution R-738-92)</p> <p>14. W-9 and 8109 Forms
(as required by the Internal Revenue Service)</p> <p>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:</p> |
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- 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-

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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]

Miami-Dade County

Name: George Pomagosa

By: _____

Name: Carlos A. Gimenez

Title: Vice President

Title: Mayor

Date: 10.22.13

Date: _____

Attest: [Signature]
Corporate Secretary/Notary Public

Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

Assistant County Attorney

State Attorney's Office

By: _____

Name: _____

Title: _____



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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.

Memorandum



Date: July 26, 2013

To: Lester Sola
Director
Internal Services Department

Thru: Miriam Singer, CPPO
Assistant Director
Internal Services Department

From: Pearl P. Bethel, CPPB
Procurement Contracting Officer 2
Chairperson, Evaluation/Selection Committee

Subject: Report of Evaluation/Selection Committee for RFP No. 851, Misdemeanor Diversion Services

The County issued a solicitation on behalf of the State Attorney's Office (SAO), Eleventh Judicial Circuit of the State of Florida to obtain proposals from capable and qualified firms or entities for the purpose of providing Misdemeanor Diversion Services for eligible offenders in the Criminal and Traffic Divisions of the County Court of the Eleventh Judicial Circuit. The solicitation allowed for the selection of up to three firms for the purpose of providing management and supervision services for eligible offenders diverted from prosecution. Once awarded, the work will be assigned to the Providers by the SAO as equitably as possible.

The Evaluation/Selection Committee (Committee) has completed the evaluation of proposals submitted in response to the solicitation following the guidelines published in the solicitation.

Committee meeting dates:

- April 12 & 15, 2013 (kick-off meetings)
- May 3, 2013 (evaluation meeting and scoring)
- July 17, 2013 (oral presentations, re-scoring, and recommendations)

Verification of compliance with contract measures:

Not applicable since no contract measures were assigned to this solicitation.

Verification of compliance with minimum qualification requirements:

The solicitation did not have any minimum qualification requirements.

Local Certified Service-Disabled Veteran's Business Enterprise Preference:

Veteran's Preference was considered in accordance with the applicable ordinance. None of the proposers qualified for the preference.

Summary of scores:

The preliminary scores are as follows:

Pre-Oral Presentations

Proposer	Technical Score (max.500)
1. Advocate Program, Inc.	493.75
2. National Corrective Group, Inc. dba Corrective Solutions	443.3
3. Court Options, Inc.	441
4. Judicial Correction Services, Inc.	411.7

- 5. Miami Dade Community Services, Inc. 364
- 6. Professional Probation Services, Inc. 297.7

The Committee decided to hold oral presentations with the four highest ranked Proposers, 1) Advocate Program, Inc., 2) National Corrective Group, Inc. dba Corrective Solutions, 3) Court Options, Inc. and 4) Judicial Correction Services, Inc.

The final scores are as follows:

Post-Oral Presentations

	Technical Score (max.500)
1. Advocate Program, Inc.	485
2. Court Options, Inc.	482
3. Judicial Correction Services, Inc.	437
4. National Corrective Group, Inc. dba Corrective Solutions	427

Local Preference:

Local Preference was considered in accordance with applicable ordinance, but did not affect the outcome as the two highest ranked Proposers are local.

Other information:

On May 6, 2013 the County received a letter from one of the appointed Committee Members, Retired Judge Tom Petersen, identifying concerns he had with the instructions given by the Chairperson, Pearl Bethel to the Committee. Judge Petersen specifically referenced the "Cone of Silence" and its applicability to communications among members of the Committee outside of a publicly noticed meeting. The County prepared a response addressing Judge Petersen's concerns and acknowledging that although Ms. Bethel's direction to the Committee members regarding not communicating outside of a publicly noticed meeting was correct, she did incorrectly attribute that requirement to the Cone of Silence Policy, instead of the Sunshine Law that prohibits such communications.

On May 23, 2013, the County received a second letter from Judge Petersen indicating that a portion of the Selection Committee meeting for the Oral Presentations on May 22, 2013 may have been inconsistent with the Sunshine Law. The Selection Committee met prior to the oral presentations and discussed the questions that would be asked of the vendors in the public meeting. Staff conducted a detailed review of the events that transpired, consulted with the Director of the Commission on Ethics and the County Attorney's Office, and, in an abundance of caution, reconvened the Committee on July 17, 2013 to redo the oral presentations in the Sunshine. The Post-Oral Presentation scores listed above are the scores of the second meeting held in strict compliance with the Sunshine Laws.

Negotiations:

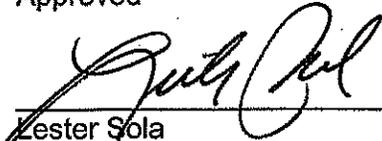
The Committee recommends that the County enter into negotiations with the two highest ranked Proposers, Advocate Program, Inc. and Court Options, Inc. The following individuals will participate in the negotiations:

- Pearl P. Bethel, Procurement Contracting Officer, Internal Services Department
- Ted Mannelli, Executive Director, SAO
- Don Horn, Chief Assistant State Attorney for Administration, SAO
- Joe Mansfield, Division Chief, County Court

Consensus Statement: The solicitation allowed for up to three firms to be selected for award. The Committee determined that the two highest ranked firms, Advocate Program, Inc. and Court Options, Inc. were clearly defined as such due to the large point differential between the two highest ranked and two lower ranked firms. Both firms have the necessary qualifications, relevant experience, technical capacity and experienced personnel to meet the needs of the County and SAO. Both firms have 1) experience in managing and supervising offenders in the SAO's Misdemeanor Diversion Services Program, 2) demonstrated a level of financial security to successfully operate the Misdemeanor Diversion Services Program, and 3) documented past performance of a successful completion of the Programs, as well as, a small recidivism rate for, first time offenders. The Program will be funded solely through the payment of fees by offenders with no additional cost to the County or SAO.

Copies of the score sheets are attached for each Evaluation/Selection Committee member, as well as a composite score sheet.

Approved



Lester Sola
Director

7/30/13
Date

COMPOSITE (Post-Orals)

RFP NO. 851

MISDEMEANOR DIVERSION SERVICES

EVALUATION OF PROPOSALS

SELECTION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (6 members)	Advocate Program, Inc.	Court Options, Inc.	Judicial Correction Services	National Corrective Group, Inc. dba Corrective Solutions
Proposer's relevant experience, qualifications, and past Performance	→	35	175	164	169	148	144
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	150	150	144	132	128
Proposer's approach to providing the services requested in this Solicitation		25	125	121	119	107	105
Proposer's financial capability		10	50	50	50	50	50
Technical Points (Total of Technical rows above)		100	500	485	482	437	427
Local Preference (5% of the Total Technical Points on the Technical Portion)							
TOTAL POINTS		100	500	485	482	437	427
RANKING				1	2	3	4

SIGNATURE

PRINT NAME:

DATE:

[Signature]
Chairperson
Maria Carballera

[Signature]
Paul P. Betzel
7/17/13

[Signature]
Welf Carballera
7/17/13

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EVALUATION OF PROPOSALS (Post-Orals)

RFP NO. 851

MISDEMEANOR DIVERSION SERVICES

CARMEN BRAVO (Administrative Office of the Courts)

SELECTION CRITERIA ↓	PROPOSERS →	Maximum Points	Advocate Program, Inc.	Court Options, Inc.	Judicial Correction Services	National Corrective Group, Inc. dba Corrective Solutions
Proposer's relevant experience, qualifications, and past Performance		35	35	30	27	30
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	30	25	22	25
Proposer's approach to providing the services requested in this Solicitation		10	10	10	10	10
Proposer's financial capability		100	100	100	89	92
Technical Points (Total of technical rows above)						
Local Preference (5% of the Total Technical Points on the Technical Portion)						
TOTAL POINTS		100	100	100	89	92

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EVALUATION OF PROPOSALS (Post-Orals)

RFP NO. 851

MISDEMEANOR DIVERSION SERVICES

JOE MANSFIELD (State Attorney's Office)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Advocate Program, Inc.	Court Options, Inc.	Judicial Correction Services	National Corrective Group, Inc. dba Corrective Solutions
Proposer's relevant experience, qualifications, and past Performance	→	35	26	35	30	30
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	→	30	30	30	30	27
Proposer's approach to providing the services requested in this Solicitation	→	25	24	25	23	20
Proposer's financial capability	→	10	10	10	10	10
Technical Points (Total of technical rows above)		100	90	100	93	87
Local Preference (5% of the Total Technical Points on the Technical Portion)						
TOTAL POINTS		100	90	100	93	87

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EVALUATION OF PROPOSALS (Post-Orals)

RFP NO. 851

MISDEMEANOR DIVERSION SERVICES

TOM PETERSEN (Retired Judge)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Advocate Program, Inc.	Court Options, Inc.	Judicial Correction Services	National Corrective Group, Inc. dba Corrective Solutions
Proposer's relevant experience, qualifications, and past Performance	→	35	35	30	30	20
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	→	30	30	25	25	20
Proposer's approach to providing the services requested in this Solicitation	→	25	25	20	20	15
Proposer's financial capability	→	10	10	10	10	10
Technical Points (Total of technical rows above)		100	100	85	85	65
Local Preference (5% of the Total Technical Points on the Technical Portion)						
TOTAL POINTS		100	100	85	85	65

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EVALUATION OF PROPOSALS (Post-Orals)

RFP NO. 851

MISDEMEANOR DIVERSION SERVICES

DON HORN (State Attorney's Office)

SELECTION CRITERIA ↓	PROPOSERS →	Maximum Points	Advocate Program, Inc.	Court Options, Inc.	Judicial Correction Services	National Corrective Group, Inc. dba Corrective Solutions
Proposer's relevant experience, qualifications, and past Performance		35	34	35	30	33
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	30	30	24	27
Proposer's approach to providing the services requested in this Solicitation		25	23	25	20	22
Proposer's financial capability		10	10	10	10	10
Technical Points <i>(Total of technical rows above)</i>		100	97	100	84	92
Local Preference <i>(5% of the Total Technical Points on the Technical Portion)</i>						
TOTAL POINTS		100	97	100	84	92

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EVALUATION OF PROPOSALS (Post-Orals)

RFP NO. 851

MISDEMEANOR DIVERSION SERVICES

KIMBERLY REDMON-JONES (MDPD)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Advocate Program, Inc.	Court Options, Inc.	Judicial Correction Services	National Corrective Group, Inc. dba Corrective Solutions
	→					
Proposer's relevant experience, qualifications, and past Performance		35	34	34	28	31
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	30	29	26	27
Proposer's approach to providing the services requested in this Solicitation		25	24	24	22	23
Proposer's financial capability		10	10	10	10	10
Technical Points (Total of technical rows above)		100	98	97	86	91
Local Preference (5% of the Total Technical Points on the Technical Portion)						
TOTAL POINTS		100	98	97	86	91

90

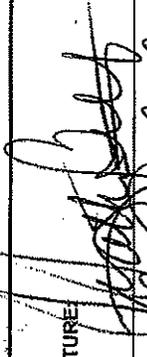
COMPOSITE
RFP NO. 851, Pre-Orals
MISDEMEANOR DIVERSION SERVICES

EVALUATION OF PROPOSALS

SELECTION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (5 members)	Advocate Program, Inc.	Court Options, Inc.	Judicial Correction Services	Miami Dade Community Services, Inc.	National Corrective Group, Inc. dba Corrective Solutions	Professional Probation Services, Inc.
Proposer's relevant experience, qualifications, and past Performance		35	175	173	159	133	121.5	150.2	95.25
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	150	150	141	125.7	104.5	127.6	94.2
Proposer's approach to providing the services requested in this Solicitation		25	125	120.75	110	103	103	115.5	79.25
Proposer's financial capability		10	50	50	31	50	35	50	29
Technical Points (Total of Technical rows above)		100	500	493.75	441	411.7	364	443.3	297.7
Veteran's Preference (5% of the Total Technical Points on the Technical Portion)									
TOTAL POINTS		100	500	493.75	441	411.7	364	443.3	297.7
RANKING									

DATE: 5/23/13
5/23/13

PRINT NAME: Pearl P. Bethel
Maria Carballeira

SIGNATURE: 
 Chairperson: 
 Reviewed By/

EVALUATION OF PROPOSALS

RFP NO. 851, Pre-Orals

MISDEMEANOR DIVERSION SERVICES

DON HORN (State Attorney's Office)

SELECTION CRITERIA ↓	PROPOSERS →	Advocate Program, Inc.	Court Options, Inc.	Judicial Correction Services	Miami Dade Community Services, Inc.	National Corrective Group, Inc. dba Corrective Solutions	Professional Probation Services, Inc.
Maximum Points							
Proposer's relevant experience, qualifications, and past Performance	35	35	35	28	24.5	32.2	26.25
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	30	30	30	24	22.5	27.6	22.5
Proposer's approach to providing the services requested in this Solicitation	25	23.75	25	20	20	22.5	21.25
Proposer's financial capability	10	10	10	10	5	10	10
Technical Points <i>(Total of technical rows above)</i>	100	98.75	100	82	72	92.3	80
Veteran's Preference <i>(5% of the Total Technical Points on the Technical Portion)</i>	5	4.9375	5	4.1	2.5	4.615	4
TOTAL POINTS	100	98.75	100	82	72	92.3	80

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EVALUATION OF PROPOSALS
RFP NO. 851, Pre-Orals
MISDEMEANOR DIVERSION SERVICES

JOE MANSFIELD (State Attorney's Office)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Advocate Program, Inc.	Court Options, Inc.	Judicial Correction Services	Miami Dade Community Services, Inc.	National Corrective Group, Inc. dba Corrective Solutions	Professional Probation Services, Inc.
	→							
Proposer's relevant experience, qualifications, and past Performance		35	34	32	32	25	30	22
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	30	28	28	17	28	15
Proposer's approach to providing the services requested in this Solicitation		25	23		25	20	25	10
Proposer's financial capability		10	10	7	10	8	10	2
Technical Points (Total of technical rows above)		100	97	90	95	70	93	49
Veteran's Preference (5% of the Total Technical Points on the Technical Portion)								
TOTAL POINTS		100	97	90	95	70	93	49

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EVALUATION OF PROPOSALS

RFP NO. 851, Pre-Orals

MISDEMEANOR DIVERSION SERVICES

CARMEN BRAVO (Administrative Office of the Courts)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Advocate Program, Inc.	Court Options, Inc.	Judicial Correction Services	Miami Dade Community Services, Inc.	National Corrective Group, Inc. dba Corrective Solutions	Professional Probation Services, Inc.
Proposer's relevant experience, qualifications, and past Performance	→	35	35	35	30	30	35	15
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	30	30	26.7	25	30	26.7
Proposer's approach to providing the services requested in this Solicitation		25	25	25	22	25	25	22
Proposer's financial capability		10	10	5	10	10	10	5
Technical Points (Total of technical rows above)		100	100	95	88.7	90	100	68.7
Veteran's Preference (5% of the Total Technical Points on the Technical Portion)								
TOTAL POINTS		100	100	95	88.7	90	100	68.7

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EVALUATION OF PROPOSALS

RFP NO. 851, Pre-Orals

MISDEMEANOR DIVERSION SERVICES

TOM PETERSEN (Retired Judge)

SELECTION CRITERIA	PROPOSERS						Maximum Points	Professional Probation Services, Inc.
	→							
Proposer's relevant experience, qualifications, and past Performance		35	25	15	15	20	10	
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	25	20	15	15	10	
Proposer's approach to providing the services requested in this Solicitation		25	15	15	20	20	10	
Proposer's financial capability		10	5	10	10	10	10	
Technical Points (Total of technical rows above)		100	70	60	60	65	40	
Veteran's Preference (5% of the Total Technical Points on the Technical Portion)								
TOTAL POINTS		100	70	60	60	65	40	

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EVALUATION OF PROPOSALS

RFP NO. 851, Pre-Orals

MISDEMEANOR DIVERSION SERVICES

KIMBERLY REDMON-JONES (MDPD)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Advocate Program, Inc.	Court Options, Inc.	Judicial Correction Services	Miami Dade Community Services, Inc.	National Corrective Group, Inc. dba Corrective Solutions	Professional Probation Services, Inc.
Proposer's relevant experience, qualifications, and past Performance	→	35	34	32	28	27	33	22
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	30	28	27	25	27	20
Proposer's approach to providing the services requested in this Solicitation		25	24	22	21	18	23	16
Proposer's financial capability		10	10	4	10	2	10	2
Technical Points (Total of technical rows above)		100	98	86	86	72	93	60
Veteran's Preference (5% of the Total Technical Points on the Technical Portion)								
TOTAL POINTS		100	98	86	86	72	93	60

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Memorandum



Date: April 12, 2013

To: Those Listed Below

From: Carlos A. Gimenez
Mayor

Subject: Appointment of Selection Committee for The State Attorney's Office of the Eleventh Judicial Circuit Request for Proposals (RFP) for Misdemeanor Diversion Services - RFP No. 851. **(Substitution)**

Please be advised that I am replacing Ted Mannelli (voting member) of the State Attorney's Office with Carmen Bravo of the Administrative Offices of the Courts. Mr. Mannelli will be added as a Technical Advisor.

If you have any questions, please contact Veronica Clark, Assistant to the Director at (305) 375-4770.

- c: Lester Sola, Director, ISD
- Katherine Fernandez Rundle, State Attorney, MDSAO
- J.D. Patterson, Director, MDPD
- Tim Ryan, Director, MDCR
- Jack Osterholt, Deputy Mayor/Director, RER
- Mario Goderich, Assistant Director, Business Affairs/RER

Selection Committee

- Pearl Bethel, ISD (Non-Voting Chairperson)
- Don Horn, State Attorney's Office
- Joe Mansfield, State Attorney's Office
- Tom Petersen, Retired Judge
- Kimberly Redmon - Jones, MDPD
- Carmen Bravo, Administrative Offices of the Courts
- Mariette Dominguez, MDCR (Alternate)

Technical Advisor

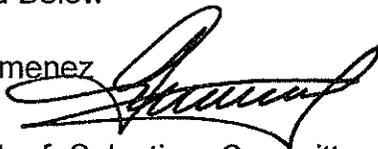
- Ted Mannelli, State Attorney's Office

2013 APR 19 P 05:05

Date: January 28, 2013

To: Those Listed Below

From: Carlos A. Gimenez
Mayor



Subject: Appointment of Selection Committee for The State Attorney's Office of the Eleventh Judicial Circuit Request for Proposals (RFP) for Misdemeanor Diversion Services - RFP No. 851.

In accordance with Administrative Order 3-34, I am hereby appointing those listed below as the Selection Committee for The State Attorney's Office of the Eleventh Judicial Circuit Request for Proposals (RFP) for Misdemeanor Diversion Services - RFP No. 851.

Selection Committee

Pearl Bethel, ISD (Non-Voting Chairperson)
Don Horn, State Attorney's Office
Joe Mansfield, State Attorney's Office
Ted Mannelli, State Attorney's Office
Tom Petersen, Retired Judge
Kimberly Redmon – Jones, MDPD
Mariette Dominguez, MDCR (Alternate)

You are directed to assist me in the selection process considering the factors delineated in the solicitation. If you are unable to participate in the selection process, contact this office through Small Business Development (SBD) by memorandum from your department director documenting the reason why you cannot participate. Only in cases of **dire** urgency may you be excused from participation.

Each Selection Committee member shall be responsible for evaluating, rating and ranking the proposals based on the criteria and procedure contained in the solicitation. The Selection Committee will meet to review the written proposals. If required, the Selection Committee will select firms to make oral presentations to the Selection Committee at a properly noticed public hearing. If proposers are invited to make oral presentations, the Selection Committee may re-rate and re-rank the proposals based upon the written documents combined with the oral presentation. You may utilize staff of the issuing department and the using agency to conduct a preliminary review of the proposals for responsiveness. All requests for responsiveness determinations shall be made in writing by the issuing department to the County Attorney's Office.

The alternate committee member will serve only in the event of an approved substitution. No substitution of committee members shall be allowed after the first official meeting of the committee. The Internal Services Department (ISD) may substitute the chairperson to ensure the appropriate level of staffing expertise as deemed necessary to accommodate the needs of this solicitation.