

# Memorandum



**Date:** May 19, 2020

**To:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

Agenda Item No. 8(F)(5)

**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 a competitive contract award, *Contract No. RFP-01336, Misdemeanor Diversion Services*, for the Miami-Dade State Attorney (SAO), Eleventh Judicial Circuit. This contract will replace a competitively solicited contract, *RFP851, Misdemeanor Diversion Services*, which was awarded under Resolution No. R-40-14, for a three-year term, with three, one-year options to renew.

The contract provides for the administration of the Misdemeanor Diversion Services Program (Program), which is available to eligible offenders in the Criminal and Traffic Divisions of the Eleventh Judicial Circuit County Court. The administration services include, but is not limited to, intake, evaluation, and supervision of eligible offenders to ensure successful completion of the Program. The contract includes three misdemeanor diversion service categories: 1) Regular Misdemeanor Crimes Diversion; 2) DUI Criminal Traffic (Back on Track Program); and 3) Miscellaneous Criminal Traffic.

The 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 agree 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.

Five firms responded to the solicitation, and two are being recommended for award, of which, both firms are local. The number of offenders assigned to each firm will be determined solely by the SAO. During the first six months of the initial three-year contract term, the SAO will assign offenders equitably to the awarded firms. Thereafter, as the need arises, the SAO will determine the most effective and equitable method for assigning the offenders between the awarded firms. However, based upon each firm's performance, the SAO reserves the right to adjust the number of offender assignments to attain the most advantageous results for the SAO.

## Scope

The scope of this item is countywide in nature.

## Fiscal Impact/Funding Source

The estimated revenue for the five-year term is \$10,000,000. There is no County or SAO funding allocated for this contract, as costs will be covered through the payment of fees by the offender to the recommended firms. The revenue from the current contract, *RFP851*, is valued at \$12,500,000 for a 78-month term and expires on August 31, 2020. The projected revenue under the replacement contract is substantially the same as the previous contract.

Department	Allocation	Funding Source	Contract Manager
State Attorney's Office	\$10,000,000	Revenue Generating	Annette Perez
<b>Total:</b>	<b>\$10,000,000</b>		

**Track Record/Monitor**

Pearl Bethel of the Internal Services Department is the Procurement Contracting Manager.

**Delegated Authority**

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

**Vendors Recommended for Award**

A Request for Proposals was issued under full and open competition on January 7, 2020. Five proposals were received in response to the solicitation.

Vendor	Principal Address	Local Address*	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Advocate Program, Inc.	1150 NW 72 Avenue Suite 200 Miami, FL	Same	84	Samek William
			93%	
Court Options, Inc.	17891 South Dixie Highway, Suite 201 Palmetto Bay, FL	Same	22	Ruben Valdivia
			79 %	

\*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor's employees who reside in Miami-Dade County as compared to the vendor's total workforce.

**Vendor(s) Not Recommended for Award**

Vendor	Local Address	Reason for Not Recommending
Miami Dade Community Services, Inc.	Yes	Deemed non-responsive by the County Attorney's Office for failure to provide material information necessary for the County to evaluate the proposal (opinion attached)
Pacific Educational Services, Inc.	No	Evaluation Scores/Ranking
Professional Probation Services, Inc.	No	

**Due Diligence**

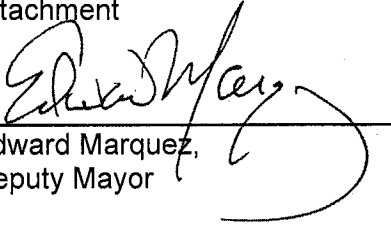
Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Pursuant to Resolution No. R-140-15, prior to re-procurement, a full review of the scope of services was conducted to ensure the replacement contract reflects the SAO's current needs. The review included conducting market research, posting a draft solicitation for industry comment, and holding meetings and drafting sessions with the SAO. The scope of services was updated to include language to remedy minor issues that were not addressed in the previous contract.

**Applicable Ordinances and Contract Measures**

- The two percent User Access Program provision does not apply.
- The Small Business Enterprise Selection Factor and Local Preference were applied.
- The Living Wage does not apply.

Attachment

A handwritten signature in black ink, appearing to read "Edward Marquez", written over a horizontal line. The signature is stylized and cursive.

Edward Marquez,  
Deputy Mayor

# Memorandum



**Date:** January 30, 2020

**To:** Princess Brown  
Procurement Contracting Officer  
Internal Services Department

**From:** Melanie Spencer  
Assistant County Attorney

**Subject:** Request for Responsiveness Determination on RFP-01336 Misdemeanor Diversion Services


---

You have asked this office if the bid submitted by Miami Dade Community Services Inc. ("MDCS") is responsive. We rely on the information provided in your January 14, 2020 memorandum to this office. For the reasons set forth below, MDCS's failure to submit the Proposer Information renders the bid non-responsive. Additionally, even if MDCS's bid was responsive, they would receive zeros in all of the evaluation criteria categories, rendering the discussion of responsiveness moot.

The purpose of the solicitation is to establish a contract 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 selected provider is to be capable and qualified to provide management and supervision services for eligible offenders diverted from prosecution. Per the Solicitation, proposers were to submit "Proposer Information." The information requested included experience, qualifications, past performance, key personnel and subcontractors, proposed approach to providing the services, and the proposer's financial capability. MDCS failed to provide any of this information with its bid.

Because the solicitation was revenue generating, and was awarded based upon the categories addressed in the "Proposer Information" section, the County was deprived of the opportunity of evaluating MDCS's bid as MDCS did not provide any of the information necessary for the County to determine what MDCS was actually bidding. The County could not determine MDCS's proposed approach to the services or any of the additional material information requested in the Proposer Information section. The failure to provide material information necessary for the County to determine the bid, results in MDCS's bid being non-responsive.

Additionally, even if MDCS was considered responsive, they would not be awarded any points for the technical criteria and therefore would not be awarded the contract, making the determination of responsiveness a moot issue.

  
\_\_\_\_\_  
Melanie Spencer  
Assistant County Attorney



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** May 19, 2020

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 8(F)(5)

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
- Statement of social equity 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 present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_) 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)(5)  
5-19-20

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-01336 TO ADVOCATE PROGRAM, INC. AND COURT OPTIONS, INC. FOR PURCHASE OF MISDEMEANOR DIVERSION SERVICES FOR THE MIAMI-DADE STATE ATTORNEY, ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA FOR THE FIVE-YEAR TERM, WITH AN ESTIMATED TOTAL REVENUE TO BE GENERATED OF UP TO \$10,000,000.00; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION AND EXTENSION PROVISIONS PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

**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:

**Section 1.** This Board approves award of Contract No. RFP-01336 to Advocate Program Inc. and Court Options, Inc. for purchase of misdemeanor diversion services for the Miami-Dade State Attorney, Eleventh Judicial Circuit of the State of Florida, in substantially the form attached and made a part hereof, for the five-year term, with an estimated total revenue to be generated of up to \$10,000,000.00.

**Section 2.** This Board authorizes the County Mayor or County Mayor’s designee to execute same for and on behalf of Miami-Dade County and to exercise all provisions of the contract, including any cancellation and extension provisions pursuant to 2-8.1 of the Code of Miami-Dade County and Implementing Order 3-38. A copy of the contract is on file and available upon request from the Internal Services Department, Strategic Procurement Division.

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:

- |                                |                      |
|--------------------------------|----------------------|
| Audrey M. Edmonson, Chairwoman |                      |
| Rebeca Sosa, Vice Chairwoman   |                      |
| Esteban L. Bovo, Jr.           | Daniella Levine Cava |
| Jose “Pepe” Diaz               | Sally A. Heyman      |
| Eileen Higgins                 | Barbara J. Jordan    |
| Joe A. Martinez                | Jean Monestime       |
| Dennis C. Moss                 | Sen. Javier D. Souto |
| Xavier L. Suarez               |                      |

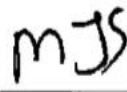
The Chairperson thereupon declared this resolution duly passed and adopted this 19<sup>th</sup> day of May, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the 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.



Melanie J. Spencer

Misdemeanor Diversion Services  
Contract No. 01336

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 72<sup>nd</sup> 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 Eleventh Judicial Circuitry of Florida, having its principal offices at 1350 NW 12<sup>th</sup> 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. 01336 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 January 7, 2020, 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. 01336 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" to mean 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 one that has broken a public law.
- i) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Provider.
- k) The words "Provider" to mean Advocate Program, Inc. and its permitted successors and assigns.
- l) The words "State Attorney's Office, Eleventh Judicial Circuit of Florida to mean (SAO).
- m) The word "subcontractor" or "subconsultant" 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 words "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(s) as a result of the offender intake and evaluation process.
- o) The words "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. 01336 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.
- 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 County's Project Manager.
- e) The Provider acknowledges that the County 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. The Provider agrees to act in an expeditious and fiscally sound manner in

providing the County 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 of this Agreement and shall continue through the last day of the 60<sup>th</sup> month. 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 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 e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

a) to the Project Manager:

State Attorney's Office of the Eleventh Judicial Circuit  
Attention: Annette Perez  
Phone: (305) 547-0858  
E-mail: AnnettePerez@MiamiSAO.com

and,

b) to the Contract Manager:

Miami-Dade County  
Internal Services Department, Strategic Procurement Division  
Attention: Chief Procurement Officer  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974  
Phone: (305) 375-4900  
E-mail: [Namita.Uppal@miamidade.gov](mailto:Namita.Uppal@miamidade.gov)

**(2) To the Provider**

Advocate Program, Inc.  
Attention: Isabel Perez-Morina  
1150 NW 72<sup>nd</sup> Avenue, Suite 200  
Miami, FL 33126  
Phone: (305) 704-0200  
E-mail: [ipmorina@advocateprogram.org](mailto:ipmorina@advocateprogram.org)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. 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 determine the price the Provider will charge 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 2.7, 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 2.7, Fees for schedule.

**ARTICLE 9. METHOD AND TIMES OF PAYMENT**

Refer to Appendix A, Scope of Services, Section 2.7, 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  
Attn: Annette Perez  
1350 NW 12<sup>th</sup> Avenue  
Miami, FL 33136

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 subcontractors. 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, Strategic Procurement 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 Provider as required by Florida Statute 440.

2. Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$1,000,000 per occurrence \$2,000,000 aggregate with no exclusion for abuse and molestation. **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 Services, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
4. Counselors Professional Liability Insurance in an amount not less than \$1,000,000 per claim.
5. Crime Coverage in an amount of no less than \$250,000. Coverages to include Employee theft, forgery or alteration, theft and robbery in and outside the premises, computer fraud, funds transfer fraud, fraudulent money orders & counterfeiting

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 "A-" as to management, and no less than "Class VII" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County 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.

**The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:**

**Miami-Dade County  
111 N.W. 1st Street  
Suite 1300  
Miami, Florida 33128-1974**

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. If the insurance certificate is received within the specified timeframe 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 assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Provider shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Provider shall be responsible for all direct and indirect costs associated with such termination.

#### **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, 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 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, 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 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 skill, 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 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**

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. Miami-Dade County or the SAO may require the Provider to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

**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 or the SAO 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 will 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 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 every difference 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 County Mayor or 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 County 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 County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.

- e) The County Mayor 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 County 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 County 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 County Mayor is entitled to exercise discretion or judgement 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 County 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, 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 both 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 the SAO may, at its expense, elect to participate in the defense if the County 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 subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Provider and its subcontractors 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 and 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 subcontractors 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 Section 2-481 of the Code of Miami-Dade County, 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 allowability and allocability 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 must notify the SAO in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

#### **ARTICLE 19. CONSENT OF THE COUNTY REQUIRED 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.

#### **ARTICLE 20. SUBCONTRACTUAL RELATIONS**

- a) If the Provider will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor 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 Subcontractor, its officers, agents, and employees, as if they were employees of the Provider. The services performed by the Subcontractor 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 the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County 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 Subcontractor 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 Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County and/or SAO, in addition to the other requirements herein provided, the Subcontractor 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. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County and/or SAO that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

- e) The County and SAO shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Provider's obligations under this Agreement. All Subcontractors 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 Subcontractors 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 and SAO finds the Provider in breach of this Contract, permitting the County and/or SAO to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County and SAO to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County and SAO to any subcontractor 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 Code of Miami-Dade County.

- 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;
  - iii. cancel orders;
  - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
  - v. take no action which will increase the amounts payable by the County under this Agreement; and
- 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
  - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- 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 delivered Deliverables on a timely basis;
  - ii. the Provider has refused or failed to supply enough properly skilled staff personnel;
  - iii. the Provider has failed to make prompt payment to subcontractors or suppliers for any Services;
  - 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;
  - vii. the Provider has failed in the representation of any warranties stated herein.
- 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 County and/or SAO's request, provide adequate assurances to the County, in writing, of the Provider's ability to perform in accordance with the terms of this Agreement. Until the County and/or SAO receives such assurances, the County and/or SAO may request an adjustment to the compensation received by the Provider for portions of the Services which the Provider has not performed. 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.

#### **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) lost revenues;
- b) 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
- c) 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's 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/or SAO 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 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 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 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 and SAO's proprietary interest therein.

During the term of the contract, the Provider will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's and SAO's property, any computer programs, data compilations, or other software which the County and SAO has developed, has used or is using, is holding for use, or which are otherwise in the possession of the 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 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 and SAO any information discovered or which is disclosed to the Provider which may relate to the improper use, publication, disclosure or removal from the

County's and SAO 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, use such documentation on any other project in which the Provider or 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 or SAO, 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 or SAO or entities controlling, controlled by, under common control with, or affiliated with the County or SAO, or organizations which may hereafter be formed by or become affiliated with the County or SAO. Such license specifically includes, but is not limited to, the right of the County or SAO 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 SAO or entities controlling, controlled by, under common control with, or affiliated with the County or SAO, or organizations which may hereafter be formed by or become 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 Provider shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Provider confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit**  
(Section 2-8.1 of the Code of Miami-Dade County)
2. **Miami-Dade County Employment Disclosure Affidavit**  
(Section 2.8.1(d)(2) of the Code of Miami-Dade County)
3. **Miami-Dade County Employment Drug-free Workplace Certification**  
(Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. **Miami-Dade County Disability and Nondiscrimination Affidavit**  
(Section 2-8.1.5 of the Code of Miami-Dade County)
5. **Miami-Dade County Debarment Disclosure Affidavit**  
(Section 10.38 of the Code of Miami-Dade County)
6. **Miami-Dade County Vendor Obligation to County Affidavit**  
(Section 2-8.1 of the Code of Miami-Dade County)
7. **Miami-Dade County Code of Business Ethics Affidavit**  
(Sections 2-8.1(j), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)
8. **Miami-Dade County Family Leave Affidavit**  
(Article V of Chapter 11 of the Code of Miami-Dade County)
9. **Miami-Dade County Living Wage Affidavit**  
(Section 2-8.9 of the Code of Miami-Dade County)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County E-Verify Affidavit**  
(Executive Order 11-116)
12. **Miami-Dade County Pay Parity Affidavit**  
(Resolution R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**  
(Resolution R-919-18)
14. **Subcontracting Practices**  
(Section 2-8.8 of the Code of Miami-Dade County)
15. **Subcontractor/Supplier Listing**  
(Section 2-8.1 of the Code of Miami-Dade County)
16. **Form W-9 and 147c Letter**  
(as required by the Internal Revenue Service)
17. **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:
  - 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
18. **Office of the Inspector General**  
(Section 2-1076 of the Code of Miami-Dade County)
19. **Small Business Enterprises**  
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
20. **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 and Code of Ethics**

Section 2-11.1(d) of the Code of Miami-Dade County 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. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

**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, subcontractors 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. 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; (i) 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 County Implementing Order 3-38; (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 shall have the power 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 subcontractors 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 Small Business Enterprises Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- e) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."

- f) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."
- g) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- h) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- i) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- j) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- k) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."
- l) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."
- m) Any other laws prohibiting wage rate discrimination based on sex.

Pursuant to Resolution R-1072-17, by entering into this Contract, the Provider is certifying that the Provider is in compliance with, and will continue to comply with, the provisions of items "h" through "m" above.

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 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, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants 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 subcontractor 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**

Under no circumstances shall the Provider without the express written consent of the County and SAO:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind

which refers to the County or SAO, or the Work being performed hereunder, unless the Provider first obtains the written approval of the County and SAO. Such approval may be withheld if for any reason the County or SAO believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

- b) Communicate in any way with any Provider, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County and SAO; and
- c) Except as may be required by law, the Provider and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Provider or such parties has been approved or endorsed by the County or 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.careersourcesfl.com/firstsource/>.

#### **ARTICLE 40. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY**

The Provider shall comply with the Public Records Laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County 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) ensuring 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) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Provider upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

**IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1<sup>st</sup> STREET, SUITE 1300, MIAMI, FLORIDA 33128**

**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

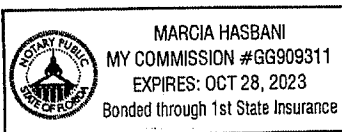
Miami-Dade County

By: [Signature]  
Name: Isabel Perez-Moreno  
Title: Chief Executive Officer  
Date: 3/11/2020  
Attest: [Signature]  
Corporate Secretary/Notary Public

By: \_\_\_\_\_  
Name: Carlos A. Gimenez  
Title: Mayor  
Date: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form and legal sufficiency



\_\_\_\_\_  
Assistant County Attorney

**2.1 Background**

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 with 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.

The Florida Legislature has long recognized the need to identify and divert some offenders to specialized programs. Chapter 948, Florida Statutes, authorizes the SAO 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 (State) 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.

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(s) 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(s).

**2.2 Assignment of Offenders**

The County on behalf of the SAO anticipates selecting up to three (3) Providers to provide the Misdemeanor Diversion Program Services. The number of offenders assigned to each Provider will be determined solely by the SAO. There is no minimum or maximum number of offenders that will be assigned to each Provider.

During the first six months of the sixty-month 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.

**2.3 General Requirements**

The Provider(s) shall:

- A) Provide management, and supervision services for eligible offenders diverted from prosecution, and be able to manage up to 1,000 assigned cases per month. The approximate number of cases is an estimate based on the average number of monthly intakes for cases in calendar year 2018. The SAO makes no guarantee with respect to the actual number of assigned cases.
- B) 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 prior to award of contract to ensure space is adequate to provide the required services.
- C) Comply with all federal and state laws, as well as applicable court orders, necessary to provide program services.
- D) Provide an annual financial disclosure of all owners or partial owners of the Provider's firm/entity.
- E) Include 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.
- F) 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.
- G) 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.
- 10) Maintain security and document protection

## 2.4 **Background Screening**

- A) The Provider's officers, direct service personnel and/or contracted personnel providing any of the required services to offenders, shall undergo a criminal background check prior to award, at the Provider's expense, conducted by a professional background screener.
- B) A comprehensive report and analysis shall be obtained from no less than two independent databases/sources, on the nationwide criminal history of such officers, direct service personnel and/or contracted personnel. This background information shall be part of the background check report that shall be kept and maintained by the Provider(s) and be available upon request by the County or SAO.
- C) Upon execution of a contract to provide the services and annually thereafter, all officers, direct service personnel employed or contracted by the Provider(s) shall be required to undergo a Level 1 screening as defined in Section 435.03, Florida Statutes, as a condition of continued employment.
- D) Direct service personnel or contracted personnel shall report to the Provider(s) any subsequent arrest within 48 hours of such arrest, and the Provider (s) shall notify the County and the SAO within 24 hours of its notification by personnel. Provider(s) 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 *no/a contendere* to any felony or misdemeanor.

If any officer or employee of the Provider(s) has criminal charges or warrants pending, the Provider(s) shall notify the County and SAO and specify the name of the officer/employee, charges/warrants pending, and jurisdiction. The Provider(s) 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.

## 2.5 **Services to be provided to Offenders**

The Provider(s) shall act as a liaison between the County, SAO and Program offenders. As a liaison, the Provider(s), 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 as detailed in the Fees section below. 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, conduct an evidence-based risk assessment and evaluate the offenders' 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(s) 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 one-on-one in-person, telephone, or video chat conversation with offenders in the Program. A report shall be compiled detailing the substance of the conversation and maintained within the offenders' file.
- E) Review the offenders' progress towards meeting all conditions of diversion, and counsel offenders as to the consequences of failure to meet the conditions on a monthly basis.
- F) Provide offenders a choice of Treatment Program Providers. At a minimum, the Provider(s) 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(s) 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(s) 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 Division (COD) for advice and counseling regarding the sealing and expunging of records. The role of the COD is to create better understanding that the role of the Office of the State Attorney 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 COD 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 and court costs. All offenders that have successfully completed the requirements through the Program shall be offered assistance in sealing and expunging their arrest through the State Attorney's Office. There shall be no charge to the offender for the referral.

## **2.6 Services Required by the County and the SAO**

The Provider(s) 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 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.
  - 2) The re-arrest of an offender.
  - 3) 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.).
  - 4) All offenders shall enroll within ten (10) days of their admission into the program. If not, a memorandum revoking the offenders shall be filed within 12 days of the initial referral and the case shall be calendared no later than ten (10) days later. The provider has the obligation to also reach out to the offender to notify the offender of any future court dates regardless of any notification by the clerk of the Court.
- G) Upon completion of diversion by the Offender, the Provider shall furnish the SAO with a memorandum of completion within ten (10) days of the offender's completion of the program and request that the case be placed on calendar by the Clerk of the Courts.
- H) All providers shall provide the SAO access to a website in which an offender's case may be reviewed.
- I) Submit a report listing all cases set for court with the status information of the offender accessible to the State Attorney's Office two (2) days prior to court.

**2.7 Fees**

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

<b>DIVERSION PROGRAM</b>	<b>COST OF DIVERSION PROGRAM</b>	<b>DISBURSEMENTS</b>
Misdemeanor Cases	No more than \$225 for offenders who agree to program participation prior to arraignment. No more than \$250 for offenders that agree to program participation at or post-arraignment.	To the Provider supervising the offender.
Traffic Cases	No more than \$125 and \$25 for each additional case to a maximum of \$175 per defendant.	To the Provider supervising the offender.
Back on Tract (BOT)	No more than \$500 for Tier 1 supervision (offenders with a breath or blood alcohol level less than .15). No more than \$650 for Tier 2 Supervision (offenders with a blood alcohol level of .15 or above or have refused a 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 the State Attorney's Office (or determined by the Court and part of the referral)	To the victims of the offender.
Denise Moon Memorial Fund (DMMF)	For misdemeanor referrals per the SAO chart (Attachment A)	To the Denise Moon Memorial Fund.
Fund for a Safer and Healthier Community (SASH)	For BOT Tier 1, \$300. For BOT Tier 2, \$500	To the Fund for a Safer and Healthier Community (SASH)
Victims' Crimes Compensation Trust Fund	\$25	To the Office of the Attorney General Crimes Compensation Trust Fund
Case Processing Fee	\$50.00	SAO

- A) The Provider(s) 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 Provider(s) shall obtain written concurrence from the SAO to transfer uncollectible balances to a collection agency.
- B) The Provider(s) 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(s) shall be responsible for insufficient fund checks and charge backs.
- D) The Provider(s) shall locate all victims, distribute restitution payments, and adequately document efforts to locate victims. In cases in which victims cannot be located, restitution payments collected from the offender shall be placed in an interesting bearing account.

Note: One year after the final offender restitution payment is made, the Provider(s), with the concurrence of the SAO, may distribute unclaimed restitution payments with accumulated interest to the Denise Moon Fund.

- E) The Provider(s) 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.

## 2.8 **Records and Reports**

The Provider(s) shall:

- A) Provide the SAO with a monthly report or reports that shall include a summary of offenders 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) Furnish the State Attorney's Office with a weekly report detailing the offenders that have violated the program and submit a revocation memorandum to the Clerk's Office for the case to be placed on calendar.
- C) Make provisions to ensure that all records of the Provider(s) shall be open to inspection upon the request of the County or the SAO.
- D) Starting with the second calendar year of the contract, annually select a cohort comprised of a minimum of 100 offenders from the previous calendar year who successfully completed their diversion. The Provider(s) shall conduct a quarterly review and provide a report to the SAO indicating whether the selected offenders have been rearrested. Each annual cohort shall be tracked for a minimum of three (3) years.
- E) Provide to the County and the SAO an annual financial audit by a Certified Public Accountant paid for by the Provider(s), to include a listing of offenders who have exited the program showing the status of payments assessed and made.
- F) Quarterly, within 10 working days of March 31, June 30, September 30, and December 31, provide the SAO with a report containing the following information:
  - 1) The number of unsuccessful completions from the program during the preceding quarter and cumulative unsuccessful terminations during the calendar year.
  - 2) The number of successful completions 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(s).
  - 4) The total amount of restitution collected from offenders assigned to the Provider(s).
  - 5) The total amount of restitution distributed to victims from offenders assigned to the Provider(s).

- 6) The total amount of fees (exclusive of restitution payments) by specific type ordered for offenders assigned to the Provider(s).
- 7) The total amount of fees (exclusive of restitution payments) by specific type collected from offenders assigned to the Provider(s).
- G) Provide quarterly reports to the SAO within 10 days of the end of the calendar quarter reports of collections made and paid to the Office of the Attorney General Crimes Compensation Trust Fund (CCTF), to include the following information:
  - 1) Number of collections made for Misdemeanor cases and the total amount collected and sent to the CCTF.
  - 2) Number of collections made for Traffic cases and the total amount collected and sent to the CCTF.
- H) Provide additional reports as may be requested by the SAO.

**2.9 Performance Evaluation**

The SAO reserves the right to conduct an annual evaluation of the performance of the Provider(s). At a minimum, unsatisfactory evaluations will require a corrective course of action by the Provider(s), and failure to correct deficiencies may result in termination of the contract or form the basis for non-renewal of option years.

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

**2.10 Additional Requested Service**

The Provider(s) shall provide additional services when requested by the SAO. However, if the Provider(s) is unable to provide the services requested, the Provider(s) 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(s) refuses to accept the additional requested services, the Provider(s) 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.

**DENISE MOON MEMORIAL FUND Donation Schedule for Misdemeanors****Pre-Trial Diversion Only**

<u>Description of Crime</u>	<u>Donation Amount</u>
Assault	50.00
Battery	50.00
Carrying a Concealed Weapon	50.00
Child Abuse/Neglect	50.00
Contracting without a License	50.00
Credit Card Theft	50.00
Criminal Mischief	50.00
Cruelty to Animals	50.00
Culpable Negligence	50.00
Defrauding an Inn Keeper	25.00
Disorderly Conduct	25.00
Disorderly Intoxication	25.00
DERM Violations	50.00
Dumping	50.00
Exposure of a Sexual Organ/Lewd and Lascivious	100.00
Fare Evasion	25.00
Fuel Transportation	50.00
Gambling	25.00
Graffiti	50.00
Improper Exhibition of a Weapon	50.00
Loitering and Prowling	25.00
Marine and Wildlife Violations	50.00
Minimum Housing	50.00
Obscene/ Harassing Phone Calls	50.00
Possession of a Legend Drug	50.00
Possession of Marijuana and Paraphernalia	50.00
Possession of Wildlife or Exotic Pets	50.00

Practicing a Licensed Profession Without a License	50.00
Prostitution/ Obstructing of the Highway w/ intent to Solicit	150.00
Solicit	25.00
Quality of Life Crimes	50.00
Resisting Without Violence	25.00
Sale of Alcohol/ Tobacco to a Minor	50.00
Stalking	50.00
Theft Petit and Retail	25.00
Trespass	50.00
Utility Theft	50.00
Vehicle for Hire/ Jitney Cases Violation of a Repeat	50.00
Violence Injunction Voyeurism Worthless Check	50.00
Voyeurism	50.00
Worthless Check	50.00

Misdemeanor Diversion Services  
Contract No. 01336

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 17891 S. Dixie Hwy, Suite 201, Palmetto Bay, 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 Eleventh Judicial Circuitry of Florida, having its principal offices at 1350 NW 12<sup>th</sup> 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. 01336 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 January 7, 2020, 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. 01336 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" to mean 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 one that has broken a public law.
- i) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Provider.
- k) The words "Provider" to mean Court Options, Inc. and its permitted successors and assigns.
- l) The words "State Attorney's Office, Eleventh Judicial Circuit of Florida to mean (SAO).
- m) The word "subcontractor" or "subconsultant" 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 words "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(s) as a result of the offender intake and evaluation process.
- o) The words "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. 01336 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.
- 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 County's Project Manager.
- e) The Provider acknowledges that the County 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. The Provider agrees to act in an expeditious and fiscally sound manner in

providing the County 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 of this Agreement and shall continue through the last day of the 60<sup>th</sup> month. 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 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 e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

##### **(1) to the County**

###### a) to the Project Manager:

State Attorney's Office of the Eleventh Judicial Circuit  
Attention: Annette Perez  
Phone: (305) 547-0858  
E-mail: [AnnettePerez@MiamiSAO.com](mailto:AnnettePerez@MiamiSAO.com)

and,

###### b) to the Contract Manager:

Miami-Dade County  
Internal Services Department, Strategic Procurement Division  
Attention: Chief Procurement Officer  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974  
Phone: (305) 375-4900  
E-mail: [Namita.Uppal@miamidade.gov](mailto:Namita.Uppal@miamidade.gov)

##### **(2) To the Provider**

Court Options, Inc.  
Attention: George Romagosa  
17891 S. Dixie Hwy, Suite 201  
Palmetto Bay, FL 33157  
Phone: (305) 378-8122  
E-mail: [gromagosa@courtoptions.org](mailto:gromagosa@courtoptions.org)

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. 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 determine the price the Provider will charge 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 2.7, 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 2.7, Fees for schedule.

**ARTICLE 9. METHOD AND TIMES OF PAYMENT**

Refer to Appendix A, Scope of Services, Section 2.7, 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  
Attn: Annette Perez  
1350 NW 12<sup>th</sup> Avenue  
Miami, FL 33136

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 subcontractors. 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, Strategic Procurement 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 Provider as required by Florida Statute 440.

2. Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$1,000,000 per occurrence \$2,000,000 aggregate with no exclusion for abuse and molestation. **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 Services, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
4. Counselors Professional Liability Insurance in an amount not less than \$1,000,000 per claim.
5. Crime Coverage in an amount of no less than \$250,000. Coverages to include Employee theft, forgery or alteration, theft and robbery in and outside the premises, computer fraud, funds transfer fraud, fraudulent money orders & counterfeiting

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 "A-" as to management, and no less than "Class VII" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County 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.

**The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:**

**Miami-Dade County  
111 N.W. 1st Street  
Suite 1300  
Miami, Florida 33128-1974**

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. If the insurance certificate is received within the specified timeframe 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 assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods

that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Provider shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Provider shall be responsible for all direct and indirect costs associated with such termination.

#### **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, 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 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, 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 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 skill, 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 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**

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. Miami-Dade County or the SAO may require the Provider to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

#### **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 or the SAO 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 will 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 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 every difference 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 County Mayor or 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 County 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 County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.

- e) The County Mayor 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 County 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 County 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 County Mayor is entitled to exercise discretion or judgement 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 County 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, 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 both 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 the SAO may, at its expense, elect to participate in the defense if the County 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 subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Provider and its subcontractors 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 and 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 subcontractors 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 Section 2-481 of the Code of Miami-Dade County, 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 allowability and allocability 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 must notify the SAO in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

#### **ARTICLE 19. CONSENT OF THE COUNTY REQUIRED 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.

#### **ARTICLE 20. SUBCONTRACTUAL RELATIONS**

- a) If the Provider will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor 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 Subcontractor, its officers, agents, and employees, as if they were employees of the Provider. The services performed by the Subcontractor 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 the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County 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 Subcontractor 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 Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County and/or SAO, in addition to the other requirements herein provided, the Subcontractor 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. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County and/or SAO that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County and SAO shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Provider's obligations under this Agreement. All Subcontractors 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 Subcontractors 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 and SAO finds the Provider in breach of this Contract, permitting the County and/or SAO to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County and SAO to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County and SAO to any subcontractor 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 Code of Miami-Dade County.
- 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;
  - iii. cancel orders;
  - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
  - v. take no action which will increase the amounts payable by the County under this Agreement; and
- 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
  - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- 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 delivered Deliverables on a timely basis;
  - ii. the Provider has refused or failed to supply enough properly skilled staff personnel;
  - iii. the Provider has failed to make prompt payment to subcontractors or suppliers for any Services;
  - 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;
  - vii. the Provider has failed in the representation of any warranties stated herein.

- 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 County and/or SAO's request, provide adequate assurances to the County, in writing, of the Provider's ability to perform in accordance with the terms of this Agreement. Until the County and/or SAO receives such assurances, the County and/or SAO may request an adjustment to the compensation received by the Provider for portions of the Services which the Provider has not performed. 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.

#### **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) lost revenues;
- b) 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
- c) 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's 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/or SAO 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 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 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 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 and SAO's proprietary interest therein.

During the term of the contract, the Provider will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's and SAO's property, any computer programs, data compilations, or other software which the County and SAO has developed, has used or is using, is holding for use, or which are otherwise in the possession of the 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 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 and SAO any information discovered or which is disclosed to the Provider which may relate to the improper use, publication, disclosure or removal from the County's and SAO 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, use such documentation on any other project in which the Provider or 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 or SAO, 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 or SAO or entities controlling, controlled by, under common control with, or affiliated with the County or SAO, or organizations which may hereafter be formed by or become affiliated with the County or SAO. Such license specifically includes, but is not limited to, the right of the County or SAO 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 SAO or entities controlling, controlled by, under common control with, or affiliated with the County or SAO, or organizations which may hereafter be formed by or become 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 Provider shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Provider confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit**  
(Section 2-8.1 of the Code of Miami-Dade County)
2. **Miami-Dade County Employment Disclosure Affidavit**  
(Section 2.8.1(d)(2) of the Code of Miami-Dade County)
3. **Miami-Dade County Employment Drug-free Workplace Certification**  
(Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. **Miami-Dade County Disability and Nondiscrimination Affidavit**  
(Section 2-8.1.5 of the Code of Miami-Dade County)
5. **Miami-Dade County Debarment Disclosure Affidavit**  
(Section 10.38 of the Code of Miami-Dade County)
6. **Miami-Dade County Vendor Obligation to County Affidavit**  
(Section 2-8.1 of the Code of Miami-Dade County)
7. **Miami-Dade County Code of Business Ethics Affidavit**  
(Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)
8. **Miami-Dade County Family Leave Affidavit**  
(Article V of Chapter 11 of the Code of Miami-Dade County)
9. **Miami-Dade County Living Wage Affidavit**  
(Section 2-8.9 of the Code of Miami-Dade County)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County E-Verify Affidavit**  
(Executive Order 11-116)
12. **Miami-Dade County Pay Parity Affidavit**  
(Resolution R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**  
(Resolution R-919-18)
14. **Subcontracting Practices**  
(Section 2-8.8 of the Code of Miami-Dade County)
15. **Subcontractor/Supplier Listing**  
(Section 2-8.1 of the Code of Miami-Dade County)
16. **Form W-9 and 147c Letter**  
(as required by the Internal Revenue Service)
17. **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:
  - 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
18. **Office of the Inspector General**  
(Section 2-1076 of the Code of Miami-Dade County)
19. **Small Business Enterprises**  
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
20. **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 and Code of Ethics

Section 2-11.1(d) of the Code of Miami-Dade County 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. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

**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, subcontractors 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. 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; (i) 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 County Implementing Order 3-38; (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 shall have the power 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 subcontractors 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 Small Business Enterprises Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- e) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."
- f) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."

- g) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- h) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- i) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- j) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- k) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."
- l) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."
- m) Any other laws prohibiting wage rate discrimination based on sex.

Pursuant to Resolution R-1072-17, by entering into this Contract, the Provider is certifying that the Provider is in compliance with, and will continue to comply with, the provisions of items "h" through "m" above.

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 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, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants 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 subcontractor 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**

Under no circumstances shall the Provider without the express written consent of the County and SAO:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County or SAO, or the Work being performed hereunder, unless the

Provider first obtains the written approval of the County and SAO. Such approval may be withheld if for any reason the County or SAO believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

- b) Communicate in any way with any Provider, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County and SAO; and
- c) Except as may be required by law, the Provider and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Provider or such parties has been approved or endorsed by the County or 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.careersourcesfl.com/firstsource/>.

#### **ARTICLE 40. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY**

The Provider shall comply with the Public Records Laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County 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) ensuring 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) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Provider upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

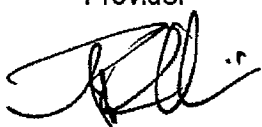
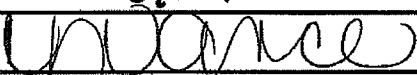
**IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1<sup>st</sup> STREET, SUITE 1300, MIAMI, FLORIDA 33128**

**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.

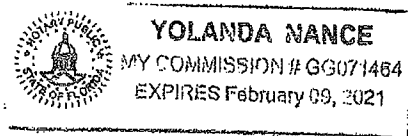
Provider

By:   
 Name: ROBEN VALDIVIA  
 Title: Director  
 Date: 3/13/20  
 Attest:   
 Corporate Secretary/Notary Public

Miami-Dade County

By: \_\_\_\_\_  
 Name: Carlos A. Gimenez  
 Title: Mayor  
 Date: \_\_\_\_\_  
 Attest: \_\_\_\_\_  
 Clerk of the Board

Corporate Seal/Notary Seal



Approved as to form and legal sufficiency

\_\_\_\_\_  
Assistant County Attorney

**2.1 Background**

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 with 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.

The Florida Legislature has long recognized the need to identify and divert some offenders to specialized programs. Chapter 948, Florida Statutes, authorizes the SAO 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 (State) 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.

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(s) 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(s).

**2.2 Assignment of Offenders**

The County on behalf of the SAO anticipates selecting up to three (3) Providers to provide the Misdemeanor Diversion Program Services. The number of offenders assigned to each Provider will be determined solely by the SAO. There is no minimum or maximum number of offenders that will be assigned to each Provider.

During the first six months of the sixty-month 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.

**2.3 General Requirements**

The Provider(s) shall:

- A) Provide management, and supervision services for eligible offenders diverted from prosecution, and be able to manage up to 1,000 assigned cases per month. The approximate number of cases is an estimate based on the average number of monthly intakes for cases in calendar year 2018. The SAO makes no guarantee with respect to the actual number of assigned cases.
- B) 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 prior to award of contract to ensure space is adequate to provide the required services.
- C) Comply with all federal and state laws, as well as applicable court orders, necessary to provide program services.
- D) Provide an annual financial disclosure of all owners or partial owners of the Provider's firm/entity.
- E) Include 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.
- F) 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.
- G) 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.
- 10) Maintain security and document protection

## 2.4 Background Screening

- A) The Provider's officers, direct service personnel and/or contracted personnel providing any of the required services to offenders, shall undergo a criminal background check prior to award, at the Provider's expense, conducted by a professional background screener.
- B) A comprehensive report and analysis shall be obtained from no less than two independent databases/sources, on the nationwide criminal history of such officers, direct service personnel and/or contracted personnel. This background information shall be part of the background check report that shall be kept and maintained by the Provider(s) and be available upon request by the County or SAO.
- C) Upon execution of a contract to provide the services and annually thereafter, all officers, direct service personnel employed or contracted by the Provider(s) shall be required to undergo a Level 1 screening as defined in Section 435.03, Florida Statutes, as a condition of continued employment.
- D) Direct service personnel or contracted personnel shall report to the Provider(s) any subsequent arrest within 48 hours of such arrest, and the Provider (s) shall notify the County and the SAO within 24 hours of its notification by personnel. Provider(s) 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 *no/a contendere* to any felony or misdemeanor.

If any officer or employee of the Provider(s) has criminal charges or warrants pending, the Provider(s) shall notify the County and SAO and specify the name of the officer/employee, charges/warrants pending, and jurisdiction. The Provider(s) 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.

## 2.5 Services to be provided to Offenders

The Provider(s) shall act as a liaison between the County, SAO and Program offenders. As a liaison, the Provider(s), 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 as detailed in the Fees section below. 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, conduct an evidence-based risk assessment and evaluate the offenders' 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(s) 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 one-on-one in-person, telephone, or video chat conversation with offenders in the Program. A report shall be compiled detailing the substance of the conversation and maintained within the offenders' file.
- E) Review the offenders' progress towards meeting all conditions of diversion, and counsel offenders as to the consequences of failure to meet the conditions on a monthly basis.
- F) Provide offenders a choice of Treatment Program Providers. At a minimum, the Provider(s) 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(s) 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(s) 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 Division (COD) for advice and counseling regarding the sealing and expunging of records. The role of the COD is to create better understanding that the role of the Office of the State Attorney 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 COD 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 and court costs. All offenders that have successfully completed the requirements through the Program shall be offered assistance in sealing and expunging their arrest through the State Attorney's Office. There shall be no charge to the offender for the referral.

## 2.6 Services Required by the County and the SAO

The Provider(s) 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 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.
  - 2) The re-arrest of an offender.
  - 3) 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.).
  - 4) All offenders shall enroll within ten (10) days of their admission into the program. If not, a memorandum revoking the offenders shall be filed within 12 days of the initial referral and the case shall be calendared no later than ten (10) days later. The provider has the obligation to also reach out to the offender to notify the offender of any future court dates regardless of any notification by the clerk of the Court.
- G) Upon completion of diversion by the Offender, the Provider shall furnish the SAO with a memorandum of completion within ten (10) days of the offender's completion of the program and request that the case be placed on calendar by the Clerk of the Courts.
- H) All providers shall provide the SAO access to a website in which an offender's case may be reviewed.
- I) Submit a report listing all cases set for court with the status information of the offender accessible to the State Attorney's Office two (2) days prior to court.



2.7 **Fees**

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

<b>DIVERSION PROGRAM</b>	<b>COST OF DIVERSION PROGRAM</b>	<b>DISBURSEMENTS</b>
Misdemeanor Cases	No more than \$225 for offenders who agree to program participation prior to arraignment. No more than \$250 for offenders that agree to program participation at or post-arraignment.	To the Provider supervising the offender.
Traffic Cases	No more than \$125 and \$25 for each additional case to a maximum of \$175 per defendant.	To the Provider supervising the offender.
Back on Tract (BOT)	No more than \$500 for Tier 1 supervision (offenders with a breath or blood alcohol level less than .15). No more than \$650 for Tier 2 Supervision (offenders with a blood alcohol level of .15 or above or have refused a 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 the State Attorney's Office (or determined by the Court and part of the referral)	To the victims of the offender.
Denise Moon Memorial Fund (DMMF)	For misdemeanor referrals per the SAO chart (Attachment A)	To the Denise Moon Memorial Fund.
Fund for a Safer and Healthier Community (SASH)	For BOT Tier 1, \$300. For BOT Tier 2, \$500	To the Fund for a Safer and Healthier Community (SASH)
Victims' Crimes Compensation Trust Fund	\$25	To the Office of the Attorney General Crimes Compensation Trust Fund
Case Processing Fee	\$50.00	SAO

- A) The Provider(s) 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 Provider(s) shall obtain written concurrence from the SAO to transfer uncollectible balances to a collection agency.
- B) The Provider(s) 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(s) shall be responsible for insufficient fund checks and charge backs.
- D) The Provider(s) shall locate all victims, distribute restitution payments, and adequately document efforts to locate victims. In cases in which victims cannot be located, restitution payments collected from the offender shall be placed in an interesting bearing account.

Note: One year after the final offender restitution payment is made, the Provider(s), with the concurrence of the SAO, may distribute unclaimed restitution payments with accumulated interest to the Denise Moon Fund.

- E) The Provider(s) 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.

## 2.8 Records and Reports

The Provider(s) shall:

- A) Provide the SAO with a monthly report or reports that shall include a summary of offenders 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) Furnish the State Attorney's Office with a weekly report detailing the offenders that have violated the program and submit a revocation memorandum to the Clerk's Office for the case to be placed on calendar.
- C) Make provisions to ensure that all records of the Provider(s) shall be open to inspection upon the request of the County or the SAO.
- D) Starting with the second calendar year of the contract, annually select a cohort comprised of a minimum of 100 offenders from the previous calendar year who successfully completed their diversion. The Provider(s) shall conduct a quarterly review and provide a report to the SAO indicating whether the selected offenders have been rearrested. Each annual cohort shall be tracked for a minimum of three (3) years.
- E) Provide to the County and the SAO an annual financial audit by a Certified Public Accountant paid for by the Provider(s), to include a listing of offenders who have exited the program showing the status of payments assessed and made.
- F) Quarterly, within 10 working days of March 31, June 30, September 30, and December 31, provide the SAO with a report containing the following information:
  - 1) The number of unsuccessful completions from the program during the preceding quarter and cumulative unsuccessful terminations during the calendar year.
  - 2) The number of successful completions 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(s).
  - 4) The total amount of restitution collected from offenders assigned to the Provider(s).
  - 5) The total amount of restitution distributed to victims from offenders assigned to the Provider(s).

- 6) The total amount of fees (exclusive of restitution payments) by specific type ordered for offenders assigned to the Provider(s).
- 7) The total amount of fees (exclusive of restitution payments) by specific type collected from offenders assigned to the Provider(s).
- G) Provide quarterly reports to the SAO within 10 days of the end of the calendar quarter reports of collections made and paid to the Office of the Attorney General Crimes Compensation Trust Fund (CCTF), to include the following information:
  - 1) Number of collections made for Misdemeanor cases and the total amount collected and sent to the CCTF.
  - 2) Number of collections made for Traffic cases and the total amount collected and sent to the CCTF.
- H) Provide additional reports as may be requested by the SAO.

**2.9 Performance Evaluation**

The SAO reserves the right to conduct an annual evaluation of the performance of the Provider(s). At a minimum, unsatisfactory evaluations will require a corrective course of action by the Provider(s), and failure to correct deficiencies may result in termination of the contract or form the basis for non-renewal of option years.

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

**2.10 Additional Requested Service**

The Provider(s) shall provide additional services when requested by the SAO. However, if the Provider(s) is unable to provide the services requested, the Provider(s) 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(s) refuses to accept the additional requested services, the Provider(s) 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.

**DENISE MOON MEMORIAL FUND Donation Schedule for Misdemeanors****Pre-Trial Diversion Only**

<u>Description of Crime</u>	<u>Donation Amount</u>
Assault	50.00
Battery	50.00
Carrying a Concealed Weapon	50.00
Child Abuse/Neglect	50.00
Contracting without a License	50.00
Credit Card Theft	50.00
Criminal Mischief	50.00
Cruelty to Animals	50.00
Culpable Negligence	50.00
Defrauding an Inn Keeper	25.00
Disorderly Conduct	25.00
Disorderly Intoxication	25.00
DERM Violations	50.00
Dumping	50.00
Exposure of a Sexual Organ/Lewd and Lascivious	100.00
Fare Evasion	25.00
Fuel Transportation	50.00
Gambling	25.00
Graffiti	50.00
Improper Exhibition of a Weapon	50.00
Loitering and Prowling	25.00
Marine and Wildlife Violations	50.00
Minimum Housing	50.00
Obscene/ Harassing Phone Calls	50.00
Possession of a Legend Drug	50.00
Possession of Marijuana and Paraphernalia	50.00
Possession of Wildlife or Exotic Pets	50.00

Practicing a Licensed Profession Without a License	50.00
Prostitution/ Obstructing of the Highway w/ intent to Solicit	150.00
Quality of Life Crimes	25.00
Resisting Without Violence	50.00
Sale of Alcohol/ Tobacco to a Minor	25.00
Stalking	50.00
Theft Petit and Retail	50.00
Trespass	25.00
Utility Theft	50.00
Vehicle for Hire/ Jitney Cases Violation of a Repeat	50.00
Violence Injunction Voyeurism Worthless Check	50.00
Voyeurism	50.00
Worthless Check	50.00