

MEMORANDUM

Agenda Item No. 8(P)(1)

TO: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

DATE: June 26, 2025

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving award of Contract No. EVN0008779 to Advocate Program, Inc. and Court Options, Inc. for misdemeanor diversion services with estimated cumulative revenue of \$21,600,000.00 for an initial five-year term, with one, three-year option to renew for the State Attorney's Office; and authorizing the County Mayor to exercise all provisions of the contracts, including any cancellation, renewal, or extensions, pursuant to section 2-8.1 of the Code and Implementing Order 3-38

The accompanying resolution was prepared by the Strategic Procurement Department and placed on the agenda at the request of Prime Sponsor Commissioner Keon Hardemon and Co-Sponsor Commissioner Roberto J. Gonzalez.




Geri Bonzon-Keenan
County Attorney

GBK/ks

MDC001

Date: June 26, 2025

To: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: Recommendation to Award Contracts for Misdemeanor Diversion Services

Summary

This item is for the purchase of misdemeanor diversion services for eligible offenders in the Criminal and Traffic Divisions of the Eleventh Judicial Circuit County Court for the State Attorney's Office (SAO). The contract provides for the administration of the Misdemeanor Diversion Services Program (Program), including, but not limited to, intake, evaluation, and supervision of eligible offenders to ensure a 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.

Approval of these contracts will allow SAO to offer qualified offenders an alternative to formal criminal prosecution. Program participants sign an agreement with the State of Florida waiving the right to a speedy trial and agreeing to comply with Program requirements and perform specific sanctions. Participants are normally supervised for six to twelve 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.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve competitive contract awards, *Contract No. EVN0008779*, Misdemeanor Diversion Services, to Advocate Program, Inc. and Court Options, Inc. for a five-year term, with one, three-year option to renew. There is no cost to the County or SAO for the provision of these services as costs will be covered through the payment of fees by the offender to the recommended firms. The estimated cumulative value for the initial term and renewal is \$21,600,000. These contracts will replace *Contact No. RFP-01336*, approved by the Board via Resolution No. R-472-20.

Background

A Request for Proposals (RFP) was issued under full and open competition on October 1, 2024. The deadline to receive proposals was November 5, 2024. An email was sent to potential proposers reminding them of the closing date and encouraging them to submit a response to the solicitation. Two responses were received by the closing date of November 5, 2024, both from local firms. The Evaluation meeting was conducted on January 8, 2025 and negotiations were finalized in February 2025. A copy of the Coordinator's Report is attached.

Responsibilities under the contract include monitoring and supervision of offenders for compliance with the terms of the Program. The number of offenders assigned to each firm will be determined solely by the SAO; however, there is no minimum or maximum number of offenders that will be assigned to each firm. During the first six months of the contract, the SAO will assign offenders equitably to the recommended firms. Thereafter, as the need arises, the SAO will determine the most effective and equitable method for assigning the offenders among the firms. However, based upon, among other factors, the 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

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 SAO will receive a \$50 per case processing fee. The estimated value for the initial five-year term is \$13,500,000. Should the County choose to exercise, at its sole discretion, the three-year option to renew, the estimated cumulative value will be \$21,600,000. The current contract is valued at \$10,000,000 for a five-year term and expires on August 31, 2025. The projected value under the replacement contract is higher than the current contract and is based on the average annual amounts collected from offenders during 2022 and 2023 for services received.

Department	Allocation	Funding Source	Contract Manager
SAO	\$21,600,000	Revenue Generating	Annette Perez
Total	\$21,600,000		

Track Record/Monitor

Pearl Bethel of the Strategic Procurement Department (SPD) 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 give notice of this award to the recommended vendors, issue the appropriate purchase orders to give effect to same and exercise all provisions of the contracts, including any cancellation, renewal, or extensions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendors Recommended for Award

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	94	Samek William
			78%	
Court Options, Inc.	17891 South Dixie Highway, Suite 201 Palmetto Bay, FL	Same	22	Ruben Valdivia
			74%	

*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.

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with SPD's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues through various vendor responsibility lists and a keyword internet search. 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 County's current needs. The review included conducting market research, posting a draft solicitation for industry comment, and holding meetings and drafting sessions with the user department.

Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners
Page 3

Applicability of Ordinances and Contract Measures

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

Attachment



James Reyes
Chief Public Safety Officer

Memorandum



Date: January 28, 2025

To: Namita Uppal, C.P.M.
Director and Chief Procurement Officer
Strategic Procurement Department

Thru: Lydia Osborne, Ph.D., CPPO, CPPB, NIGP-CPP *Lydia Osborne*
Assistant Director
Strategic Procurement Department

From: Princess Brown *Princess Brown*
Selection Committee Coordinator

Subject: Report of Competitive Selection Committee for Request for Proposal (RFP) No. EVN0008779 – Misdemeanor Diversion Services

The Strategic Procurement Department (SPD) issued a competitive Request for Proposals (RFP) on October 1, 2024, on behalf of the State Attorney's Office (SAO), Eleventh Judicial Circuit of the State of Florida to obtain proposals from qualified 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 solicitation allowed for the selection of up to three firms for a five-year period for the purpose of providing management and supervision services for eligible offenders diverted from prosecution. Once awarded, the work will be equitably assigned to the recommended firm(s) by the SAO.

On November 5, 2024, two proposals were received in response to the solicitation. The Competitive Selection Committee (Committee) has completed the evaluation of the proposals following the guidelines published in the solicitation.

Competitive Selection Committee meeting dates:

December 9, 2024 (Kick-off)

January 8, 2025 (Evaluation, Scoring and Recommendation)

Verification of compliance with contract measures:

A Small Business Enterprise selection factor was assigned to this solicitation. None of the proposers qualified for the selection factor:

Verification of compliance with minimum qualification requirements and responsiveness:

The solicitation did not have any minimum qualification requirements.

The proposals were reviewed for responsiveness; no issues were identified.

Local Certified Veteran's Business Enterprise Preference:

Veteran's Preference was considered. None of the proposers qualified for the preference.

Office of the Inspector General (OIG) and/or Commission on Ethics and Public Trust (COE) Reports, Findings and/or Enforcement Documentation for Proposer and Subcontractor(s):

Staff submitted a request to OIG on November 8, 2024. A response was received on November 12, 2024, advising that no reports were found. Staff submitted a request to COE on November 8, 2024. A response was received on November 27, 2024, advising that no reports were found.

Office of the Commission Auditor (OCA) Background Check:

Staff provided Committee members with the Neutrality Affidavits, along with the list of proposers and subcontractors, to complete. Staff submitted Committee members' completed Neutrality Affidavits and

Resumes to OCA. OCA submitted the results of the background checks to the COE for further review of findings. A response was received from the COE advising that there were no conflicts of interest.

Summary of scores:

The Committee conducted scoring in accordance with the criteria outlined in the solicitation. The RFP did not include Price criteria as the fees are established by the SAO to be paid by offenders. The Committee decided not to hold oral presentations. The final scores are as follows:

Proposer	Technical Score (max.500)
1. Advocate Program, Inc.	491
2. Court Options, Inc.	465

Upon review of scores, there were no variances identified that exceeded 33% of the average score by all Committee members by criteria.

Local Preference:

Local Preference was considered, but did not affect the outcome as both Proposers are local.

Administrative Leave Eligibility:

The following County employees served as scoring members of the Committee and timely completed all committee-related duties, including submittal of the Neutrality Affidavit within three business days from Selection Committee Coordinator's notification; initial scoring within 30 calendar days of Selection Committee Coordinator's completion of required reviews; and are hereby entitled to one day of paid administrative leave pursuant to Implementing Order No. 3-34.

Employee's Name	Employee's Department
Seraphin Bernard	MDCR
Sally Contreras	ISD

*Three Committee members were from the SAO

Deadlines for Completion of Tasks During Evaluation:

Implementing Order No. 3-34, Formation and Performance of Competitive Selection Committees and *Implementing Order No. 2-13, Guidelines and Procedures Regarding Legal Opinions*, establishes certain timeframes for the completion of reviews and receipt of information during the evaluation phase. Timeframes for completion of tasks are included in the table below:

<u>Task</u>	Date	Number of Days* per I.O.	Actual Number of Days*
Proposals received	11/5/24	NA	NA
Upon Proposal Submission: SPD Review within 10 Calendar Days			
SPD sent list of proposers/subcontractors to Committee members for Neutrality Affidavit/Resume	11/22/24	10	3
After SPD Review Above: Below Tasks Completed Concurrently within 30 Calendar Days Total			
One Committee member returned completed Neutrality Affidavit/Resume to SPD within three days of request	11/27/25	3*	3*
One Committee member did not return completed Neutrality Affidavit/Resume to SPD within three days of request	12/2/24	3*	6*
SPD sent received Neutrality Affidavit/Resume to OCA for background check	12/2/24 & 12/3/24	NA	5
OCA returned background checks to SPD	12/4/24	5*	1*
COE responded to OCA findings (if OCA refers findings)	12/24/24	14	20

<u>Task</u>	<u>Date</u>	<u>Number of Days* per I.O.</u>	<u>Actual Number of Days*</u>
After Above Tasks Completed, Conduct Scoring Meeting(s)**			
Scoring meeting	01/8/25	30	15

* All numbers listed are calendar days except when marked with an asterisk are business days.

**Scoring to be scheduled within 30 days from all required background checks, responsiveness and compliance reviews

One CSC member, Seraphin Bernard, was out of the office when the Neutrality Affidavit was requested, therefore did not return the Neutrality Affidavit by the deadline; CSC member returned Affidavit immediately upon return to work.

Negotiations:

The Committee recommends that the County enter negotiations with the two proposers, Advocate Program, Inc. (Advocate) and Court Options, Inc. (Court Options). The following individuals will participate in the negotiations:

Princess Brown, Procurement Contracting Officer, Strategic Procurement Department
Stephen Talpins, Chief Assistant State Attorney, SAO

Technical and operational assistance and feedback will be requested from appropriate staff as needed during the negotiation process.

Consensus Statement:

The Committee concurred that Advocate and Court Options provided the specified services outlined in the RFP. Both companies demonstrated significant experience in delivering these services, which they are both currently providing to the County. The proposals were comprehensive and thorough, and met all requirements to continue delivering these services efficiently and effectively. Furthermore, the services will be funded exclusively through fees paid by offenders, without any additional financial burden on the County or SAO.

Copies of the score sheets are attached for each Committee member, as well as a composite score sheet. Your approval of the Committee's recommendation is requested.

Approved

Namita Uppal
Digitally signed by Namita Uppal
DN: cn=Namita Uppal, o=Miami Dade County, ou=Chief Procurement Officer, email=uppaln@miamidade.gov, c=US
Date: 2025.01.29 13:39:01 -05'00'

Namita Uppal, C.P.M.
Director and Chief Procurement Officer

Date

EVN0008779
Misdemeanor Diversion Services
EVALUATION OF PROPOSALS

COMPOSITE

EVALUATION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (5 members)	Advocate Program, Inc.	Court Options, Inc.
Proposer's relevant experience, qualifications, and past performance		35	175	175	165
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	150	145	137
Proposer's approach to providing the services requested in this Solicitation		25	125	122	114
Proposer's financial capability		10	50	49	49
TOTAL POINTS		100	500	491	465
Ranking				1	2

Print Name:

Princess Brown

Print Name:

Coleen Christie

Signature:

Chairperson

Reviewer

RFP NO. ENV0008779
Misdemeanor Diversion Services
EVALUATION OF PROPOSALS - Initial Scoring

COMMITTEE MEMBER NAME: Sally Contreras

EVALUATION CRITERIA	PROPOSERS	Maximum Points	Advocate Program, Inc.	Court Options
Proposer's experience, qualifications, and past performance		35	35	35
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	30	29
Proposer's approach to providing services requested in the solicitation		25	25	23
Proposer's financial capability		10	9	9
TOTAL POINTS		100	99	96

SIGNATURE

RFP NO. ENV0008779
 Misdemeanor Diversion Services
 EVALUATION OF PROPOSALS - Initial Scoring

COMMITTEE MEMBER NAME: Leonard Thompson

EVALUATION CRITERIA	PROPOSERS	Maximum Points	Advocate Program, Inc.	Court Options
Proposer's experience, qualifications, and past performance		35	30 35	30
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	25	22
Proposer's approach to providing services requested in the solicitation		25	22	20
Proposer's financial capability		10	10	10
TOTAL POINTS		100	87 92	82

SIGNATURE

RFP NO. ENV0008779
 Misdemeanor Diversion Services
 EVALUATION OF PROPOSALS - Initial Scoring

COMMITTEE MEMBER NAME: Lizette Soubal

EVALUATION CRITERIA	PROPOSERS	Maximum Points	Advocate Program, Inc.	Court Options
Proposer's experience, qualifications, and past performance		35	35	35
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	30	30
Proposer's approach to providing services requested in the solicitation		25	25	25
Proposer's financial capability		10	10	10
TOTAL POINTS		100	100	100


 SIGNATURE

RFP NO. ENV0008779
Misdemeanor Diversion Services
EVALUATION OF PROPOSALS

COMMITTEE MEMBER NAME: SERAPHIN W. BERNARD

EVALUATION CRITERIA	PROPOSERS	Maximum Points	Advocate Program, Inc.	Court Options, Inc.
Proposer's experience, qualifications, and past performance		35	35	32
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	30	28
Proposer's approach to providing services requested in the solicitation		25	25	23
Proposer's financial capability		10	10	10
TOTAL POINTS		100	100	93

SIGNATURE

RFP NO. ENV0008779
Misdemeanor Diversion Services
EVALUATION OF PROPOSALS - Initial Scoring

COMMITTEE MEMBER NAME: Stephen Telford

EVALUATION CRITERIA	PROPOSERS	Maximum Points	Advocate Program, Inc.	Court Options, Inc.
Proposer's experience, qualifications, and past performance		35	35 (195)	33 (165)
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		30	30 (145)	28 (137)
Proposer's approach to providing services requested in the solicitation		25	25 (122)	23 (114)
Proposer's financial capability		10	10 (49)	10 (49)
TOTAL POINTS		100	100 (491)	94 (465)

SIGNATURE



MEMORANDUM

(Revised)

TO: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

DATE: June 26, 2025

FROM: 
Glen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(P)(1)

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 ____, majority plus one ____, 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) ____, 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(P)(1)
6-26-25

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT NO. EVN0008779 TO ADVOCATE PROGRAM, INC. AND COURT OPTIONS, INC. FOR MISDEMEANOR DIVERSION SERVICES WITH ESTIMATED CUMULATIVE REVENUE OF \$21,600,000.00 FOR AN INITIAL FIVE-YEAR TERM, WITH ONE, THREE-YEAR OPTION TO RENEW FOR THE STATE ATTORNEY'S OFFICE; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACTS, INCLUDING ANY CANCELLATION, RENEWAL, OR EXTENSIONS, PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE 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 authorizes award of Contract No. EVN0008779, in substantially the forms attached and made a part hereof, to Advocate Program, Inc. and Court Options, Inc. for Misdemeanor Diversion Services with estimated cumulative revenue of \$21,600,000.00 for an initial five-year term, with one, three-year option to renew for the State Attorney's Office.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to exercise all provisions of the contracts, including any cancellation, renewal or extensions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

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:

Anthony Rodriguez, Chairman
Kionne L. McGhee, Vice Chairman

Marleine Bastien
Sen. René García
Roberto J. Gonzalez
Danielle Cohen Higgins
Natalie Milian Orbis
Micky Steinberg

Juan Carlos Bermudez
Oliver G. Gilbert, III
Keon Hardemon
Eileen Higgins
Raquel A. Regalado

The Chairperson thereupon declared this resolution duly passed and adopted this 26th day of June, 2025. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: _____

Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SMG

Sophia Guzzo

EVN0008779
Misdemeanor Diversion Services

THIS AGREEMENT for the provision of misdemeanor diversion services, made and entered into as of this _____ day of _____ by and between Advocate Program, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 1150 NW 72nd Avenue, Suite 200, Miami, FL 33126 (the "Provider"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (the "County"), and the Eleventh Judicial Circuitry of Florida, having its principal office at 1350 NW 12th Avenue, Miami, Florida 33136 (hereinafter referred to as the "SAO").

WITNESSETH:

WHEREAS, the Provider has offered to provide misdemeanor diversion services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A), Miami-Dade County's Request for Proposal ("RFP") No. EVN0008779 and all associated addenda and attachments, and the requirements of this Agreement; and

WHEREAS, the Provider has submitted a written proposal dated November 5, 2024 (the "Provider's Proposal") which is incorporated herein by reference; and

WHEREAS, the County desires to procure from the Provider such misdemeanor diversion services for 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 "Article" or "Articles" to mean the terms and conditions delineated in this Agreement.
- b) The word "Contract" or "Agreement" to mean collectively the (i) Articles, (ii) Scope of Services, (iii) all other appendices and attachments hereto, and (iv) all amendments issued hereto, and (v) Provider's Proposal.
- c) The words "Contract Date" to mean the date on which this Agreement is effective.
- d) The words "Contract Manager" to mean the Chief Procurement Officer, Strategic Procurement Department, or the duly authorized representative designated to manage the Contract.
- e) The word "Days" to mean calendar days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Provider to the Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "Joint Venture" to mean an association of two or more persons, partnerships, corporations, or other business entities under a contractual agreement to conduct a specific business enterprise for a specified period with both sharing profits and losses.
- h) The word "Offender" to mean one that has broken a public law.
- i) The words "Project Manager" to mean the SAO or the duly authorized representative designated to manage the Project.
- j) The word "Provider" to mean Advocate Program, Inc., Inc. and its permitted successors.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the Work to be performed by the Provider.

- l) The words "Service" or "Services" to mean the provision of misdemeanor diversion services in accordance with the Scope of Services.
- m) The words "State Attorney's Office, Eleventh Judicial Circuit of Florida to mean (SAO).
- n) 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.
- o) 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.
- p) The words "Treatment Program Provider" to mean a contract provider who provides courses and other treatment to offenders diverted from prosecution.
- q) The word "Work" 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) Articles 1 through 46, 2) Appendix A, and 3) Miami-Dade County's RFP No. EVN0008779 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 terms "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 Project Manager.
- e) The terms "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 Project Manager.
- f) 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 the 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 in all aspects of the Work 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 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 necessary for the completion of this Contract. All Work shall be accomplished at the direction of and to the satisfaction of the Project Manager.
- e) The Provider acknowledges that the County shall make all policy decisions regarding the Scope of Services. The Provider agrees to provide input on policy issues in the form of recommendations. The Provider shall implement 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 identified on the first page of this Agreement and shall continue through the last day of the 60th month, thereafter. The County, at its sole discretion, may renew this Contract for one, three-year option to renew. The County may extend this Contract for up to an additional 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 (the "Board").

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: (i) Registered or Certified Mail, with return receipt requested; (ii) personally by a by courier service; (iii) Federal Express Corporation or other nationally recognized carrier to be delivered overnight; or (iv) via facsimile or e-mail (if provided below) with delivery of hard copy pursuant to (i), (ii), or (iii) in this paragraph. The addresses for such notice are as follows:

(1) To the County

- a) to the Project Manager:

State Attorney's Office of the Eleventh Judicial Circuit
Attention: Annette Perez
1350 NW 12th Avenue
Miami, FL 33136
Phone: (305) 547-0858
E-mail: AnnettePerez@MiamiSAO.com

and

- b) to the Contract Manager:

Miami-Dade County
Strategic Procurement Department
Attention: Chief Procurement Officer
111 NW 1st Street, Suite 1300

Miami, FL 33128-1974
Phone: (305) 375-4900
Email: cpo@miamidade.gov

(2) To the Provider

Advocate Program, Inc.
Attention: Isabel Perez-Morina
1150 NW 72nd Avenue, Suite 200
Miami, FL 33126 Phone: (305) 704-0200
E-mail: 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 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 Work undertaken by the Provider before County's approval of this Contract shall be at the Provider's risk and expense.

With respect to travel costs and travel-related expenses, the Provider agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses, including employee lodging, transportation, per diem, and all miscellaneous cost and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

ARTICLE 8. FEES

Refer to the Scope of Services, Section 2.7, Fee Schedule.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

Refer to the Scope of Services, Section 2.7, Fee Schedule

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 12th 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, defend 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 Strategic Procurement Department, certificate(s) 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 Chapter 440, Florida Statutes.
2. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, not to exclude coverage for Products and Completed Operations. **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. Professional Liability Insurance in an amount not less than \$1,000,000 per claim.

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 Best's Insurance Guide, published 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 a member 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 NW 1st Street
Suite 2340
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 certificate of insurance is received within the specified timeframe but not in the manner prescribed in this Agreement, the Provider shall have an additional five 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 certificate 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 of insurance is scheduled to expire during the term of the Contract, the Provider shall submit new or renewed certificate of insurance to the County before such expiration. If expired certificate of insurance is/are not replaced or renewed to cover the Contract period, the County may suspend the

Contract until the new or renewed certificate is/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 Work 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 Work described herein and to full and prompt cooperation by the Provider in all aspects of the Work. At the request of the County and SAO, the Provider shall promptly remove from the Project any Provider's employee, Sub-Provider, or any other person performing Work hereunder. The Provider agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Provider.
- b) The Provider agrees to defend, hold harmless and indemnify the County and SAO and shall be liable and responsible for all claims, suits, actions, damages, and costs (including attorneys' fees and court costs) made against the County or the 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 County or SAO. 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 always agrees that it will employ, maintain, and assign to the performance of the Work 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 Work described herein, in a competent and professional manner.
- e) The Provider shall always cooperate with the County and the SAO and coordinate its respective work efforts to maintain the progress most effectively and efficiently in performing the Work.
- 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, 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 or SAO. 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 and activities under this Agreement, an independent Provider, and not an employee, agent or servant of the SAO. All persons engaged in any of the Work performed or Services provided pursuant to this Agreement shall always, 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 the SAO.

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

ARTICLE 14. DISPUTE RESOLUTION PROCEDURE

- a) The Provider hereby acknowledges that the 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 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 the Parties. Any such dispute shall be brought, if at all, before the County Mayor within ten (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 regarding 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.
- f) This Article will survive the termination or expiration of this Agreement.

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 the 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 or the SAO should so choose. Furthermore, the County or the 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 such defense or settlement 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 Agreement. The Provider and its Subcontractors and suppliers shall retain such records, and all other documents relevant to the Work furnished under this Agreement for a period of three 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 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, 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 within five business days of the Commission Auditor's request. 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 needs 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. However, such substitution shall not become effective until the County has approved said 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 causes 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, omissions, 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 Work, will state in writing to the County the name of the proposed Subcontractor, the portion of the Work 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 Work to be performed. Such Work 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 Work 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 Work 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 Subcontractor 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 the SAO in the event the County or the SAO finds the Provider in breach of this Contract, permitting the County or the SAO to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County and the 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) This Agreement may be terminated for cause by the County for reasons including, but not limited to, (i) the Provider commits an Event of Default (as defined below in Article 24) and fails to cure said Event of Default (as delineated below in Article 25), or (ii) Provider attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.
- b) This Agreement may also be terminated for convenience by the County. Termination for convenience is effective on the termination date stated in the written notice provided by the County.
- c) If County terminates this Agreement for cause under Article 23(a) above, the County may, in its sole discretion, also 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 pay all direct or indirect costs associated with such termination or cancellation, including attorneys' fees.
- d) The foregoing notwithstanding, if the Provider attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement, the Provider may be debarred from County contracting 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.
- 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.
- h) In the event the Provider fails to cure an Event of Default timely, the County may terminate this Agreement, and the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports, and data.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default is a material breach of this Agreement by the Provider, and includes but is not limited to the following:
- i. the Provider has not delivered Deliverables and/or Services 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; or
 - viii. the Provider fails to comply with Article 39.
- 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 Work or any portion thereof, the County and/or SAO may request that the Provider, within the timeframe set forth in the County and/or SAO's request, provide adequate assurances to the County and/or SAO, in writing, of the Provider's ability to perform in accordance with the terms of this Agreement. 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 Work 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 and/or SAO may:

- i. treat such failure as a repudiation and/or material breach 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 Work or any part thereof either by itself or through others.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County shall notify the Provider (the "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 Work upon the Effective Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, whether or not the County elects to terminate this Agreement as a result thereof, the Provider shall be liable for all damages resulting from the default, irrespective of whether the County elects to terminate the Agreement, 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'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 for 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) 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 the public records laws of the State of Florida (the "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 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 (the "Computer Software"). All third-party license agreements must also be honored by the Provider and its 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 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 and SAO's property of any information technology software and hardware and will take such steps as are within the Provider's authority to prevent improper use, disclosure, or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Provider hereby acknowledges and agrees that the County or SAO retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County or SAO to the Provider hereunder or furnished by the Provider to the County or SAO and/or created by the Provider for delivery to the County or SAO, 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 or SAO, 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 or SAO's copyrights or other proprietary rights.
- b) All 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. SUPPLIER/VENDOR REGISTRATION/CONFLICT OF INTEREST

- a) **Supplier/Vendor Registration**
The Provider shall be a registered vendor with the County – Strategic Procurement Department, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the vendor's Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. This number becomes Provider'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**
- **Payments to individual/Provider for goods and services provided to Miami-Dade County**
- **Tax reporting purposes**
- **Provision of unique identifier in the vendor database used for searching and sorting departmental records**

The Provider confirms its commitment to comply with the vendor registration requirements and the associated affidavits available in **INFORMS** at <https://supplier.miamidade.gov>.

b) **Conflict of Interest and Code of Ethics**

Sections 2-11.1 (c) and (d) of the Code require that any County official, agency/board member or employee, or any member of his or her immediate family who, through a firm, corporation, partnership or business entity, has a 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 obtain and submit a written conflict of interest opinion from the County's Ethics Commission prior to the official, agency/board member or employee, or his or her immediate family member entering into any contract or transacting any business with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business transaction entered in violation of these subsections, as amended, shall be rendered voidable. All County officials, 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 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 No. 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (the "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, 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 of one percent (0.25%) 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 of one percent (0.25%) 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 Board; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order No. 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 of one percent (0.25%) 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 Trust contracts, transactions, accounts, records, and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and

programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications, and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of IPSIGs 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. FEDERAL, STATE, AND LOCAL COMPLIANCE REQUIREMENTS

As applicable, Provider shall comply, subject to applicable professional standards, with the provisions of 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 clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions.
- c) The Clean Air Act of 1955, as amended, (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended.
- d) The Davis-Bacon Act, as amended (40 U.S.C. §3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 C.F.R. Part 5).
- e) The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 2).
- f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics Ordinance".
- g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Providers from County Work".
- h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave".
- i) 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.
- j) The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d)).
- k) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 C.F.R. Part 146).
- l) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited".
- m) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 *et seq.*) "Discrimination".
- n) Chapter 22 of the Code of Miami-Dade County (§ 22-1 *et seq.*) "Wage Theft".
- o) Any other laws prohibiting wage rate discrimination based on sex.

- p) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 *et seq.*) "Business Regulations".
- q) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).
- r) Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier or to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs".

Pursuant to Resolution No. 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 "j" through "o" 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 or 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), and permit(s) 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 unlawfully against any employee or applicant for employment on the basis 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, Deliverables 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 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 regarding 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 Work 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 Work, Deliverables or Services provided by the Provider or such parties has been approved or endorsed by the County or SAO.

ARTICLE 37. BANKRUPTCY

The County may 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 in Miami-Dade County.

ARTICLE 39. COUNTY USER ACCESS PROGRAM (UAP)

Not applicable

ARTICLE 40. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

No member, officer, or employee of the County, no member of the governing body of the locality in which the Project is situated, no member of the governing body in which the County was activated, and no other public official of such locality or localities who exercises any functions

or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

ARTICLE 41. FORCE MAJEURE

Under applicable law, shall refer to an act of nature (such as, but not limited to, a hurricane, flood, and/or earthquake), war, terrorism, riot, sovereign conduct, strikes, lockouts, fires, epidemics and/or pandemic, adverse governmental conditions or conduct of third parties.

Neither the County nor the Provider shall be held liable or responsible to the counterparty nor be deemed to have defaulted under or breached this Contract for failure or delay in performing any obligation under this Contract when such failure or delay is caused by an act of Force Majeure. Within twenty-four (24) hours of the occurrence of an act of Force Majeure, the affected party shall notify the counterparty of the act by sending an e-mail message to the Project Manager of the other party. In addition, the affected party shall provide to the counterparty within seven days of determining the cause of the Force Majeure, a written explanation via e-mail concerning the circumstances that caused the act of Force Majeure and the overall impacts to the Contract. Upon receipt of the written explanation, the parties shall mutually agree to any contractual modifications as necessary to continue the Contract with minimal impact to County operations. The County maintains the right to terminate the Contract for convenience or obtain the goods and/or services through a separate contract, taking over the performance of the Work or any part thereof either by itself or through others.

ARTICLE 42. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code, 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 Career Source South Florida ("CSSF"), the designated Referral Agency, of the vacancy and list the vacancy with CSSF 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 CSSF. 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 CSSF 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 First Source Hiring Referral Program are available at <https://iapps.careersourcesfl.com/firstsource/>.

ARTICLE 43. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Provider shall comply with the Public Records Laws, 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, Florida Statutes, 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 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128.

ARTICLE 44. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Provider and its Subcontractors are jointly and severally obligated to comply with the provisions of Section 448.095, Florida Statutes, as amended, titled "Employment Eligibility." The Provider affirms that (a) it has registered and uses the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of the Provider; (b) it has required all Subcontractors to this Contract to register and use the E-Verify system to verify the work authorization status of all new employees of the Subcontractor; (c) it has an affidavit from all Subcontractors to this Contract attesting that the Subcontractor does not employ, contract with, or subcontract with, unauthorized aliens; and (d) it shall maintain copies of any such affidavits for duration of the Contract. Registration information is available at: (<http://www.uscis.gov/e-verify>)

If County has a good faith belief that Provider has knowingly violated Section 448.09(1), Florida Statutes, then County shall terminate this contract in accordance with Section 448.095(5)(c), Florida Statutes. In the event of such termination the Provider agrees and acknowledges that it may not be awarded a public contract for at least one (1) year from the date of such termination and that Provider shall be liable for any additional costs incurred by the County because of such termination.

In addition, if County has a good faith belief that a Subcontractor has knowingly violated any provisions of Sections 448.09(1) or 448.095, Florida Statutes, but Provider has otherwise complied with its requirements under those statutes, then Provider agrees that it shall terminate its contract with the Subcontractor upon receipt of notice from the County of such violation by Subcontractor in accordance with Section 448.095(5)(c), Florida Statutes.

Any challenge to termination under this provision must be filed in the Circuit or County Court by the County, Provider, or Subcontractor no later than twenty (20) calendar days after the date of contract termination.

ARTICLE 45. KIDNAPPING, CUSTODY OFFENSES, HUMAN TRAFFICKING AND RELATED OFFENSES AFFIDAVIT

By entering into, amending, or renewing this Contract, including, without limitation, a grant agreement or economic incentive program payment agreement (all referred to as the "Contract"), as applicable, the Contractor is obligated to comply with the provisions of Section 787.06, Florida Statutes ("F.S."), "Human Trafficking," as amended, which is deemed as being incorporated by reference in this Contract. All definitions and requirements from Section 787.06, F.S., apply to this Contract.

This compliance includes the Contractor providing an affidavit that it does not use coercion for labor or services. This attestation by the Contractor shall be in the form attached to this Contract as the Kidnapping, Custody Offenses, Human Trafficking and Related Offenses

Affidavit (the "Affidavit") and must be executed by the Contractor and provided to the County when entering, amending, or renewing this Contract.

This Contract shall be void if the Contractor submits a false Affidavit pursuant to Section 787.06, F.S., or the Contractor violates Section 787.06, F.S., during the term of this Contract, even if the Contractor was not in violation at the time it submitted its Affidavit.

ARTICLE 46. 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 date identified on the first page of this Agreement.

Provider

Miami-Dade County

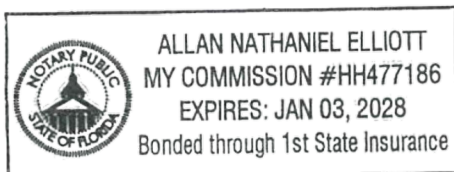
By: 

Name: Isabel Perez-Morina

Title: Chief Executive Officer

Date: 02/26/2025

Attest: 
Corporate Secretary/Notary Public



Corporate Seal/Notary Seal

By: _____
for

Name: Daniella Levine Cava

Title: Mayor

Date: _____

Attest: Juan Fernandez-Barquin
Clerk of the Court and Comptroller

By: _____
(Deputy Clerk Signature)

Print Name: _____

Approved as to form
and legal sufficiency

Assistant County Attorney

APPENDIX A – SCOPE OF SERVICES**2.1 Background**

Currently, there are three misdemeanor diversion programs (collectively the Program): 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(s) 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 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 initial five-year contract term, the SAO will assign offenders equitably to the Providers. Thereafter, as the need arises, the SAO will determine the most effective and equitable method for assigning the offenders among the Providers. However, based upon, among other factors, the Provider's performance, the SAO reserves the right to adjust the number of offender assignments to attain the most advantageous results for the SAO.

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 2023. 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) Have 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) Upon execution of a contract to provide the services and annually thereafter, all officers, direct service personnel employed or contracted by the Provider(s) will be required to undergo a Level 1 screening as defined in Section 435.03, Florida Statutes, as a condition of continued employment, at the Provider's expense. All Criminal Background checks must be conducted by

a professional background screener.

- B) 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.
- C) 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.
- 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 (lead individual) 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, including 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 nonpayment 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:

DIVERSION PROGRAM	COST OF DIVERSION PROGRAM	DISBURSEMENTS
Misdemeanor Cases	No more than \$225 for offenders who agree to program participation prior to arraignment. No more than \$275 for offenders that agree to program participation at or post-arraignment.	To the Provider supervising the offender.
Traffic Cases	No more than \$150 and \$25 for each additional case to a maximum of \$200 per defendant.	To the Provider supervising the offender.
Back on 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)	\$50	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 2.7, 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 following up with the Offender regarding 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 interest 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 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.