

**COURT ORDER
2015-0649**



RFP No. 2015-012-6466 Request for Proposal for Substance Abuse Treatment Services –
Contract Execution

On a motion made by Commissioner Dr. Theresa M. Daniel, District 1, and seconded by Commissioner Dr. Elba Garcia, District 4, the following order was passed and adopted by the Commissioners Court of Dallas County, State of Texas:

BRIEFING DATE: 4/21/2015
FUNDING SOURCE: Grant, Escrow, and General Fund

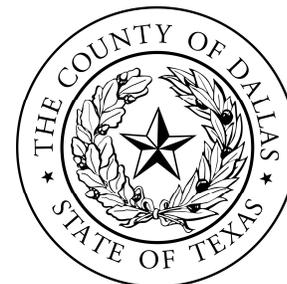
Be it resolved and ordered that the Dallas County Commissioners Court does hereby authorize and approve the execution of the attached contracts for substance abuse services between Dallas County and Homeward Bound, Inc., Nexus Recovery Center, and Recovery Healthcare Corporation under RFP No. 2015-012-6466 Request for Proposal for Substance Abuse Treatment Services and authorize the County Judge to execute all related documents on behalf of Dallas County.

Done in open court May 5, 2015, by the following vote:

IN FAVOR: Honorable Clay Lewis Jenkins, County Judge
Commissioner Dr. Theresa M. Daniel, District 1
Commissioner John Wiley Price, District 3
Commissioner Dr. Elba Garcia, District 4
OPPOSED: None
ABSTAINED: None
ABSENT: Commissioner Mike Cantrell, District 2

Recommended by: Gloria McCulloch
Originating Department: Purchasing

COMMISSIONERS COURT BRIEFING



DATE: 4/21/2015

SUBMITTING DEPARTMENT: Purchasing

THROUGH:

SUBJECT: RFP No. 2015-012-6466 Request for Proposal for Substance Abuse Treatment Services – Execute Final Contract for Award

BACKGROUND:

On April 7, 2015, by authorization of the Commissioners Court under Court Order 2015-0489, the Purchasing Department entered into contract negotiations with Homeward Bound, Inc., Nexus Recovery Center, and Recovery Healthcare Corporation for the aforementioned solicitation. Contract negotiations have been ongoing and final contracts have been executed by Homeward Bound, Inc., Nexus Recovery Center, and Recovery Healthcare Corporation and are attached. The purpose of this briefing is to recommend Dallas County execute the contracts.

OPERATIONAL IMPACT:

The purpose of these contracts is to provide inpatient and outpatient substance abuse treatment and counseling services to adult offenders charged with a criminal offense and evaluated to be chemically dependent. The contracts will be for an initial one (1) year term with the option to extend for three (3) additional one (1) year periods based on performance and funding.

FINANCIAL IMPACT:

The funding for the Substance Abuse Treatment Services will come from Grant, Escrow, and General Fund. The total amount paid under each contractual agreement shall not exceed the amount of one hundred seventy-five thousand and 00/100 dollars (\$175,000.00) annually. This Contract's estimated amount is subject to being either decreased or increased at the County's sole discretion. Program funding may vary from year to year based on the availability of funding.

LEGAL IMPACT:

The District Attorney's Office – Civil Division has approved the contracts as to form.

PROJECT SCHEDULE:

The initial term of the contracts are effective from the date of final execution by the County Judge.

M/WBE PARTICIPATION:

The EEO1 forms have been provided to Commissioners Court.

| | | | |
|------------------------|------------|-----------------------------------|------------------|
| RECOMMENDED BY: | Purchasing | PREPARED BY: | Lenora Sevillian |
| | | APPROVED BY DEPT HEAD: | Gloria McCulloch |

STRATEGIC PLAN COMPLIANCE:

This RFP complies with Vision 3 of the County's Strategic Plan – Dallas County is safe, secure and prepared.

RECOMMENDATION:

The Purchasing Department, in conjunction with the District Attorney's Office – Civil Division and the DIVERT Court, recommends that the Commissioners Court approve the execution of the attached contracts for substance abuse services between Dallas County and Homeward Bound, Inc., Nexus Recovery Center, and Recovery Healthcare Corporation under RFP 2015-012-6466 Request for Proposal for Substance Abuse Treatment Services and authorize the County Judge to execute all related documents on behalf of Dallas County.

NAME OF FIRM: Nexus Recovery Center

5. Section D- EMPLOYMENT DATA

Employment at this establishment- Report all permanent full and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

Number of Employees (Report employees in only one category)

| Job Categories | Race/Ethnicity | | | | | | | | | | | | | | TOTAL COL. A-N |
|---|--------------------|----|---|---|---|---|---|------------------------|----|----|---|---|---|---|----------------|
| | Hispanic or Latino | | | | | | | Not-Hispanic or Latino | | | | | | | |
| | Male | | | | | | | Female | | | | | | | |
| | A | B | C | D | E | F | G | H | I | J | K | L | M | N | |
| Executive/Senior Level Officials and Managers | | | 1 | | | | | | 2 | | | | | | 0 |
| Prof/Mid-Level Officials and Managers | | | 2 | | | 1 | | | 3 | 3 | | | | | 3 |
| Professionals | 1 | 4 | | 1 | | | | | 15 | 6 | | | | | 9 |
| Technicians | | | | | | | | | | | | | | | |
| Sales Workers | | | | | | | | | | | | | | | |
| Administrative Support Workers | | | | | | | | | 4 | 6 | | 1 | | | 12 |
| On Call Workers | | | | | | | | | | | | | | | |
| Operatives | | | | | | | | | | 2 | | | | | 3 |
| Laborers and Helpers | | | | | | | | | | | | | | | 2 |
| Service Workers | | 10 | 1 | 2 | | | | | 13 | 55 | 1 | 1 | | | 83 |
| TOTAL | | 18 | 4 | 3 | | | | | 37 | 72 | 1 | 2 | | | |
| PREVIOUS YEAR TOTAL | | 16 | 8 | 3 | | | | | 35 | 76 | 1 | 2 | 2 | | 143 |

1. Date(s) of payroll period used: 2/8/2015 (Omit on the Consolidated Report.)

Section E-ESTABLISHMENT INFORMATION (Omit on the Consolidated Report). What is the major activity of this establishment? (Be specific, i.e., manufacturing steel casings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity)

Section F- REMARKS- Use this item to give any identification data appearing on the last EEO-1 report which differs from that given above, explain major changes in composition of reporting units and other pertinent information

Section G- CERTIFICATION

Check One All reports are accurate and were prepared in accordance with the instructions. (Check on Consolidated Report only.)

This report is accurate and was prepared in accordance with the instructions.

Name of Certifying Official: A. Rebecca Crowell
 Title: Executive Director
 Signature: *A. Rebecca Crowell* Date: 2/16/15
 Name of person to contact regarding this report: A. Rebecca Crowell
 Title: Executive Director
 Address (Number and Street): 8733 La Prada Dr.
 City and State: Dallas, TX
 Telephone No. (including area code and extension): 214.321.0166 x2100
 Zip Code: 75228
 Email address: borwell@nextistorecovery.org

All reports and information obtained from individual reports will be kept confidential as required by Section 709(e) of Title VII. WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW, U.S. CODE, TITLE 18, SECTION 1001

5. EEO-1 Form (To be submitted by the prime and any sub with 20% or more of the contract).

NAME OF FIRM: Recovery Healthcare Corporation

5. Section D- EMPLOYMENT DATA

Employment at this establishment- Report all permanent full and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

Number of Employees (Report employees in only one category)

Race/Ethnicity

| Job Categories | Not-Hispanic or Latino | | | | | | | | | | | | | | TOTAL COL. A-N | |
|---|------------------------|----|----|----|---|---|----|--------|---|---|---|---|---|---|----------------|-----|
| | Male | | | | | | | Female | | | | | | | | |
| | A | B | C | D | E | F | G | H | I | J | K | L | M | N | | O |
| Executive/Senior Level officials and Managers | 1.1 | 1 | 2 | | | | | | | | | | | | | 3 |
| First/Mid-Level Officials and Managers | 1.2 | 4 | 6 | 8 | 1 | 1 | 2 | 1 | 1 | | | | | | | 23 |
| Professionals | 2 | 2 | 1 | 1 | | | 4 | 3 | | | | | | | | 11 |
| Technicians | 3 | | | | | | | | | | | | | | | |
| Sales Workers | 4 | | 1 | | | | | | | | | | | | | 1 |
| Administrative Support Workers | 5 | 35 | 44 | 12 | 6 | 1 | 13 | 7 | | | | | | | | 118 |
| Craft Workers | 6 | | | | | | | | | | | | | | | |
| Operatives | 7 | | | | | | | | | | | | | | | |
| Labors and Helpers | 8 | | | | | | | | | | | | | | | |
| Service Workers | 9 | | | | | | | | | | | | | | | |
| TOTAL | 10 | 41 | 52 | 24 | 7 | 2 | 19 | 11 | | | | | | | | 156 |
| PREVIOUS YEAR TOTAL | 11 | 38 | 32 | 23 | 6 | 1 | 20 | 12 | | | 1 | | | | | 133 |

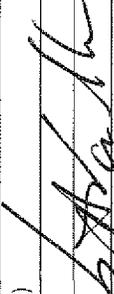
1. Date(s) of payroll period used: 12/26/2014 (Omit on the Consolidated Report.)

Section E-ESTABLISHMENT INFORMATION (Omit on the Consolidated Report). What is the major activity of this establishment? (Be specific, i.e., manufacturing steel casings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.)

Section F-REMARKS-Use this item to give any identification data appearing on the last EEO-1 report which differs from that given above, explain major changes in composition of reporting units and other pertinent information

Section G- CERTIFICATION

| | | |
|---|-------------------------------------|--|
| 1 | <input checked="" type="checkbox"/> | All reports are accurate and were prepared in accordance with the instructions. (Check on Consolidated Report only.) |
| 2 | <input checked="" type="checkbox"/> | This report is accurate and was prepared in accordance with the instructions. |

Name of Certifying Official: Larry Vanderwoude Title: President/CEO Signature:  Date: 02/04/2015

Name of person to contact regarding this report: Larry Vanderwoude Title: President/CEO Address (Number and Street): 9090 North Stemmons Frwy Suite A

City and State: Dallas, Texas Zip Code: 75247 Telephone No. (including area code and extension): 214-819-1401 Email address: larryv@recoveryhealthcare.com

All reports and information obtained from individual reports will be kept confidential as required by Section 709(e) of Title VII. WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW, U.S. CODE, TITLE 18, SECTION 1001

Description of Race and Ethnic Identification and Job Categories are found @ <http://www.eeoc.gov/employers/eeo1survey/2007/instructions.cfm> / Appendix 4. Race and Ethnic Identification / and Appendix 5. Description of Job Categories

COUNTY OF DALLAS §

STATE OF TEXAS §

CONTRACT
between
DALLAS COUNTY, TEXAS ("County")
and
RECOVERY HEALTHCARE CORPORATION ("Contractor")
for

SUBSTANCE ABUSE TREATMENT SERVICES TO COUNTY PROBLEM SOLVING COURTS

1. PURPOSE

This Contract is entered into by and between Contractor, a 501(c)(3) nonprofit corporation, and County, a governmental entity, in accordance with the Commissioners Court Order, County's Request for Proposal No. 2015-012-6466 ("RFP 2015-012-6466"), Contractor's RFP response relating to its Substance Abuse Treatment Services dated February 16, 2015 ("Contractor's Proposal"), and pursuant to the authority granted by the applicable statutes, including those under the Texas Government Code, Texas Health and Safety Code Chapter 469, and Texas Code of Criminal Procedure, for substance abuse treatment services relating to the drug court program ("Program") for the Dallas County courts, including the Dallas County Divert Court and the Dallas County Mental Illness Diversion Court (collectively, the "County Problem Solving Courts").

2. TERM

Unless otherwise stated in this Contract, the Term of this Contract will be from April 30, 2015 through April 29, 2016. This Contract may be extended annually for three additional years upon mutual written agreement of the parties hereto.

3. INCORPORATED DOCUMENTS

All related documents are incorporated herein by reference for all purposes including, without limitation, the following:

- 1) RFP 2015-012-6466; and
- 2) Contractor's Response to RFP 2015-012-6466 ("Contractor's Response").

4. ORDER OF PRECEDENCE OF RELATED DOCUMENTS

In the event of a conflict between this Contract, RFP 2015-012-6466, and Contractor's Response, the following order of precedence shall apply:

- 1) this Contract;
- 2) Contractor's Response; then
- 3) RFP 2015-012-6466.

5. SCOPE OF SERVICES

A. Contractor shall perform and complete the Services as stated in this Contract, in RFP 2015-012-6466 and in Contractor's Response, all of which are incorporated herein by reference for all purposes.

B. Project Managers. Contractor and County at the start of this Contract shall assign specific or a chain of Project Managers ("Managers") who can address all administrative, technical, and contractual issues effectively and efficiently. The Managers will be responsible for the management and implementation of this Contract and to serve as the primary contact for each party throughout the Term of this Contract. Each party represents that its Manager is and will be fully qualified and authorized to perform the tasks assigned to Manager; provided, however, that any significant deviation from the intent of this Contract, any increase in cost to the County, or any extension to the deliverable due dates will not be effectively unless signed by the authorized Signatories for both parties via a formal Amendment to the Contract.

- 1) Removal of Manager. Upon at least fourteen (14) calendar days advance written notice, and with the written consent of the other party, which consent shall not be unreasonably withheld or delayed, either party may replace its Project Manager.
- 2) County Project Manager ("County Manager"). The County Manager, or the County Manager's designated representative ("County Representative"), will be responsible for coordinating all aspects of service relating to this Contract. Contractor will work under the direction of the County Manager or County Representative throughout the Term of the Contract.

The County Manager or County Representative shall decide all questions that may arise as to the quality and acceptability of any Services performed under this Contract. If, in the opinion of the County Manager or County Representative, the performance was unsatisfactory, the County shall notify the Contractor of such and the Contractor shall immediately make such performance acceptable to the reasonable satisfaction of County at no additional cost to County.

- 3) Contractor's Project Manager ("Contractor Manager"). Contractor shall assign or designate, without additional costs to County, a Contract Manager, for and during any and all performance of Services by Contractor, who shall be fully qualified and authorized to perform the tasks assigned to him/her and who shall, without limitation:
 - a) Be reasonably accessible;
 - b) Assume group coordination, management, monitoring, administrative, and leadership responsibilities for Contractor personnel that perform the Services;
 - c) Have the ability to respond efficiently and effectively to County's immediate concerns during the performance of these Services, including the ability to lead and direct Contractor personnel while they are performing the Services.

C. Personnel.

- 1) Personnel Qualifications. Contractor warrants that all personnel it uses under this

Contract (the "Contractor Personnel") shall be: employees of Contractor or, if applicable, Contractor's subcontractor(s), fully qualified and licensed to perform the tasks assigned them, and in compliance with all applicable immigration laws. Contractor shall identify to County all third party contractors and subcontractors, and their roles and responsibilities, upon request. Contractor shall be solely responsible for payment of all wages, benefits, worker's compensation, disability benefits, unemployment insurance, as well as for withholding any required taxes for all Contractor Personnel in accordance with applicable federal, state, and local law. Contractor agrees to promptly (within two (2) business days), provide County with information regarding individual Contractor Personnel or proposed Contractor Personnel as County may reasonably request.

- a) Compensated Substance Abuse counselors who render clinical services must have a license from the Texas Department of State Health Services ("DSHS") in compliance with the Counselor and Qualified Professional licensure rules;
 - b) Must maintain Facility Licensure Standards by DSHS for Intensive Residential, Residential, Detoxification, Outpatient and/or Intensive status.
- 2) Personnel Cooperation. Each party recognizes the importance of cooperation among their respective employees, and each party will use commercially reasonable efforts to ensure positive working relationships between the parties so as to ensure timely completion of their respective tasks.
- 3) Replacement or Removal of Contractor Personnel.
- a) *County Initiated Request of Removal of Contractor Personnel.* County may, upon a written notice to the Contractor Manager or the person signing this Contract, require Contractor to remove an individual immediately from providing Services for the following reasons: violation of the terms and conditions of this Contract; violation of County's work rules and regulations; criminal activity; violation of state, federal, or municipal statutes; and engagement by said individual in activities that could be detrimental to County or County personnel, as determined by County in its sole discretion. Contractor shall replace the removed individual with other Contractor Personnel as appropriate.
 - b) *Replacement of Contractor Personnel.* Contractor shall have the right to make reasonable and necessary changes to the list of Contractor Personnel in order to accomplish the purposes of this Contract with prior written notice to the County Manager. Any changes in the Contractor Personnel shall be made utilizing persons of similar background, experience and credentials and shall be for the benefit of County. Contractor shall not be required to obtain County's prior approval of temporary changes due to vacation or illness of Contractor Personnel, but must provide immediate written notice to the County Manager. If the temporary change in Contractor Personnel is for a period to exceed fifteen (15) business days, Contractor shall be obligated to seek the County's approval, which will not be unreasonably withheld or delayed.
- D. Provide detoxification, intensive residential and supportive residential substance abuse treatment services to substance abusing offenders (hereinafter called the "Participants") that the staff of the Problem Solving Courts have determined to be unable to pay in part

and/or in total, for these services;

- E. Provide all necessary personnel, equipment, materials, supplies, facilities to carry out the services;
- F. Coordinate with County to identify needs of the Participants that are beyond the scope of Contractor's substance abuse treatment services and make appropriate referrals in such circumstances;
- G. Develop and implement procedures for services to Participants with concurring disorders and/or mental and physical disabilities;
- H. Establish and maintain County Court-approved written policies and procedures relating to services for Participants, including those relating to, without limitation, admission, discharge, discharge planning, treatment, transportation, safety and security, clinical supervision, referral activities, house management, documentation of services, incident reporting and resolution. These policies and procedures shall have the express approval by the County courts prior to implementation;
- I. Provide administrative services to ensure a smooth and maximum participation by Participants, including:
 - 1) Cooperate and coordinate with County staff at all levels;
 - 2) Provide orientation to Participants regarding services and support resources;
 - 3) Contact the County Manager by both phone and email within twenty-four (24) hours of failure of any Participant to comply with the Program, including, without limitation, his/her treatment plan, participation schedule, failure to show for initial appointment, and/or unauthorized departures;
 - 4) Document at least on a weekly basis the Participant's progress, level of participation and compliance with treatment goals and objectives and provide, in writing, weekly progress reports to the appropriate Problem Solving Court staff on each Participant at no additional cost to County;
 - 5) Transport residential Participants to Problem Solving Court at least once a month to meet face to face with the Judge for assessment of progress in the treatment program;
 - 6) Pick up Participants from the Dallas County jail when appropriate;
 - 7) Ensure the safety and security of Participants, while providing substance abuse treatment services;
 - 8) Refer Participant back to the County for further action if Contractor determines that Participant needs additional or different treatment services. The process by which this action will occur will be addressed in the Problem Solving Court's Policies and Procedures;
 - 9) Submit discharge summary reports to the applicable Problem Solving Court Case

Staff immediately upon discharge of Participants from Contractor's program;

10) Comply with County policies and procedures as set forth by the Program;

J. Provide testimonies in courts at the request of County for no additional cost to County;

6. PAYMENT FOR SERVICES

A. Contractor agrees to submit to the applicable Problem Solving Court complete, fully documented and accurate itemized statements of invoices with appropriate/applicable attachments, statistical and programmatic documentation reports, as required by County for the performed Services no later than the fifteenth (15th) of the calendar month following the prior month's Services.

B. Each statement shall be in a form acceptable to the Dallas County Auditor, and shall include details of the Services rendered as may be requested by the Auditor for verification purposes. The statement shall, at a minimum, include a description of the Services, the day(s) and the amount of time during the day(s) that Contractor performed the Services, and the total amount billed for Services rendered.

C. After receipt of the statement, the applicable Problem Solving Court shall review the statement and approve it with any modifications deemed appropriate and thereafter forward the statement with any modifications to the County Auditor for payment. **Contractor shall hold harmless and indemnify the County for any discrepancy between the amount submitted for payment and the actual payment finally approved by the County.**

D. Upon receipt of statement, County agrees to compensate Contractor within thirty (30) business days at the following rates:

| Type of Service | Unit | Divert Rate |
|---|------|-------------|
| Supportive Outpatient Counseling – Individual | Hour | \$ 54.00 |
| Supportive Outpatient Counseling – Group | Hour | \$ 17.00 |
| Intensive Outpatient Counseling – Individual | Hour | \$ 54.00 |
| Intensive Outpatient Counseling – Group | Hour | \$ 17.00 |

County will make payment to Contractor upon receipt of a verified and proper billing for Services actually rendered. Any payments by County to Contractor may be withheld if the Contractor fails to comply with County's contract provisions, deliverables, or other requirements relating to Contractor's performance of work and services under this Contract. County shall pay Contractor only for those costs that are allowable under applicable laws, including, without limitation, the federal rules, regulations, cost principles, and those stated in this Contract. County shall have the right to withhold all or part of any payments to the Contractor to offset any payment or reimbursement made to Contractor for ineligible expenditures and/or undocumented units of service billed.

E. Not to Exceed Amount. The maximum amount to be paid under this Contract is one hundred seventy-five thousand and 00/100 Dollars (\$175,000.00). This Contract's estimated amount is subject to being either decreased or increased at the County's sole discretion. Program funding may vary from year to year based on the availability of

funds.

- F. Contractor agrees that a temporary delay in making payments due to the County's accounting and disbursement procedures shall not place the County in default of this Contract and shall not render the County liable for interest or penalties, provided such delay shall not exceed thirty (30) calendar days after its due date. Any payment not made within thirty (30) calendar days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.
- G. Prior Debts. County shall not be liable for costs incurred or performances rendered by Contractor before or after the Contract Term; for expenses not billed to County within the applicable time frames set forth in this Contract; or for any payment for Services or activities not provided pursuant to the terms of this Contract.
- H. Administrative Controls. Contractor shall establish, document and maintain adequate administrative and internal controls to ensure that only allowable and valid costs are billed to County for Services intended under this Contract. Contractor must refund any expenditures or payments that are not within the scope or intent of this Contract.

7. EXPENSES

Unless prior written approval by County is obtained, Contractor shall be responsible for all mileage, parking fees, and/or other expenses related to the fulfillment of the requirements of the Contract. Upon County's prior written approval for travel, living, and out of pocket expenses, County shall reimburse Contractor for mileage and other expenses related to the fulfillment of the requirements of the Contract to the extent that such expenses are reasonably consistent with County policies for such reimbursements and expenses.

8. REPORTING AND ACCOUNTABILITY

- A. Contractor agrees to submit all required documentation and reports on a timely basis and in accordance with the specified time frames.
- B. Contractor agrees that all information, data and supporting documentation that relates to the Services under this Contract shall remain the property of the County.
- C. Should County determine it reasonably necessary, Contractor shall make all of its records and books reasonably related to this Contract available without delay to authorized County personnel to fulfill inspection or auditing deadlines and purposes or to substantiate the provisions of Services under this Contract. Required documents may include, but are not limited to, documents pertaining to Services provided for purposes of programming, creation and modification of data fields, and records of telephone hours of support provided.
- D. Contractor agrees to make available, at reasonable times and for reasonable periods, those supporting documents pertaining to Services. All documents shall be maintained and kept by Contractor for a minimum of four (4) years and ninety (90) calendar days after the termination of the Contract period. If any litigation, claim or audit involving these records begins before the specified period expires, Contractor must keep the records and documents until the later occurrence of either the end of an additional four (4) years and ninety (90) calendar days from the date of court filings/audit findings, or

until all litigation, claims or audit findings are resolved.

E. Disclosure by Contractor to County. Contractor is required to disclose to County without delay the following:

- 1) Any receipt of funds by Contractor other than, or in addition to, the funds paid by County for the Services to Participants under this Contract. Both parties agree that Contractor shall reimburse County for the portion of such funds attributed to the provision of Services under this Contract;
- 2) Any reduction of compensation rate for Services to other clients. Both parties agree that Contractor shall charge County the same reduced rates for those Services to Participants; and
- 3) Report any actions or citations by any other governmental, accrediting or licensing agencies that may affect Contractor's, including its employees', officers', and agents' licensure status or ability to provide the Services hereunder.

9. INDEMNIFICATION

To the fullest extent authorized by law, Contractor, including its assigns, subcontractors, officers, directors, employees (collectively, "Contractor") shall forever waive, release, indemnify and hold harmless County, its Commissioners, Judge, assigns, officers, directors, employees (collectively, "County") from and against any and all losses, damages, injuries (including death), causes of action, claims, demands, liabilities, judgments, suits, losses, damages, fines, assessments, penalties, adverse awards and expenses (whether based upon tort, breach of contract, patent, trademark or copyright infringement, or other intellectual property infringement, failure to pay employee taxes or withholdings, failure to obtain worker's compensation insurance, or otherwise), whether known or unknown, including, without limitation, legal and related legal fees and expenses, of any kind or nature arising out of or on account of, or resulting from (1) any actual or alleged intentional or negligent act or omission of, or default in the performance of, attempted performance of, or failure to perform, its obligations pursuant to this Contract by Contractor, (2) Contractor's involvement in the specified services under this Contract, (3) any terms, conditions, or underlying provisions of this Contract, including but not limited to, any premises or special defect known or unknown to County, and any injury to individuals present during Contractor's involvement or provision of Services under the terms and conditions of this Contract, including willful acts such as assault, copyright, licensing and patent infringement relating to any software and/or equipment provided by Contractor; and wrongful imprisonment or other intentional torts as a result of incorrect and/or scrambled information downloaded from any software and/or equipment provided by Contractor, and (4) the selection, provision, misuse, use or failure to use, by Contractor or any person or entity, of any medical devices, tools, supplies, materials, equipment, or any other devices, tools, supplies, materials, equipment, or vehicles (whether owned or supplied by County, or any other person or entity) in connection said work or operations;

AND FURTHER, Contractor, to the fullest extent allowed by law, agrees to waive, release, indemnify and hold harmless County against any and all losses, damages, injuries (including death), causes of action, claims, demands, liabilities, judgments, suits, fines, assessments, penalties, adverse awards and/or other expenses, of any kind or nature

whatsoever (whether based upon tort, breach of contract, patent, trademark or copyright infringement, or other intellectual property infringement, failure to pay employee taxes or withholdings, failure to obtain worker's compensation insurance, or otherwise), including, without limitation, legal and related legal fees and expenses, of any kind or nature that are incurred by or sought to be imposed on County arising out of or on account of, or resulting from injury (including death), whether known or unknown, including, but not limited to, exposure to any disease, by any manner or method whatsoever, or damage to property (whether real, personal or inchoate), arising out of or in any way related (whether directly or indirectly, causally or otherwise) to the Contract and/or the performance of, attempted performance of, or failure to perform, operation or work by County, its contractors, or its subcontractors, and/or any other person or entity. This indemnification shall apply, whether or not any such injury or damage has been brought on any theory of liability, intentional wrongdoing, strict product liability, County's negligence, or breach of non-delegable duty. Contractor further agrees to defend (at the election of County) at its sole cost and expense against any claim, demand, action or suit for which indemnification is provided herein.

Approval and acceptance of Contractor's Services by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor for the accuracy and competency of their Services; nor shall such approval and acceptance be deemed to be an assumption of such responsibility by the County for any defect, error or omission in the Services performed by Contractor in this regard. Contractor shall defend, hold harmless and indemnify the County for damages resulting from such defects, errors or omissions.

No Indemnification by County. Contractor acknowledges and agrees that Dallas County does not have the ability under Article XI, Section 7 of the Texas Constitution to indemnify Contractor or any other third party for damages arising under this Contract.

Survival. The provisions of this Section 9 shall survive termination, expiration and/or cancellation of this Contract, or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.

10. INSURANCE

- A. Without limiting any of the other obligations or liabilities of the Contractor and each of its subcontractors, Contractor agrees that it will have and maintain, and will require its subcontractors to have and maintain, at Contractor's and the subcontractors' own respective expense, in full force and effect minimum insurance for themselves, including their officers, employees, agents, representatives, volunteers and subcontractors (collectively, "Contractor") with companies approved by the State of Texas and satisfactory to County.
- B. As a condition precedent to commencement of any work, within ten (10) calendar days after the Effective Date of this Contract, Contractor shall furnish to the *Dallas County Director of Purchasing* (at the same address given below under this Insurance heading) the following minimum insurance coverage that show the County as the certificate holder and covers the period of the Term of this Contract and any renewals:
- 1) Statutory Workers' Compensation Insurance that meets the requirements of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, or, if

self-insured, then Contractor must provide to County evidence of a certificate issued by the Workers' Compensation Commission approving such self-insurance. If Contractor has no employee (as defined by the Texas Workers' Compensation Act), Contractor shall provide County with a sworn Affidavit in lieu of a Certificate of Insurance, which Affidavit shall be attached and incorporated into this Contract by reference for all purposes, and which shall state that there is no employee. In the event that any work is subcontracted, Contractor shall require the subcontractors to similarly provide Workers' Compensation Insurance for all of the subcontractors' employees, unless such employees are afforded protection by the Contractor. Contractor shall bear the burden of all workers' compensation coverage for all of its subcontractors and subcontractors' employees who do not have workers' compensation coverage. Contractor also represents that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with an appropriate insurance carrier, or in the case of self insurance, with the Texas Workers' Compensation Commission. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

| <u>Types of Coverage</u> | <u>Limits of Liability</u> |
|---------------------------|----------------------------|
| Workers' Compensation | Statutory |
| Employer's Liability | |
| Bodily injury by Accident | \$500,000.00 Each Accident |
| Bodily injury by Disease | \$500,000.00 Each Employee |
| Bodily injury by Disease | \$500,000.00 Policy Limit |

- 2) Professional Liability Insurance or Errors and Omissions Insurance. Contractor shall indemnify County for damages resulting from defects, errors or omissions and shall secure, pay for and maintain in full force and effect during the Term of this Contract and any subsequent extensions hereto and thereafter for an additional five (5) years from the effective date of cancellation, termination or expiration of this Contract or any subsequent extensions hereto, sufficient errors and omissions insurance in a minimum amount of One Million dollars and 00/100 Dollars (\$1,000,000.00) covering all individuals performing under this Contract, with certificates of insurance evidencing such coverage to be provided to the County.

- 3) Commercial General Liability Insurance, including Contractual Liability Insurance. Contractor shall maintain Commercial General Liability Insurance coverage, including Contractual Liability Insurance, for the following: (a) Premises operations; (b) Independent contractors or consultants; (c) Products/Completed operations; (d) Personal injury; (e) Contractual liability; (f) Explosion, collapse and underground; (g) Broad form property damage, to include fire legal liability. Such insurance shall carry a limit not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence with a general aggregate of Two Million and 00/100 Dollars (\$2,000,000.00) and products and completed operations aggregate of Two Million and 00/100 Dollars (\$2,000,000.00). There shall not be any policy exclusion or limitations for personal injury, advertising liability, medical payments, fire damage, legal liability, broad form property damage, and/or liability for independent contractors and volunteers, or such additional coverage or increase in limits, including those contained within any bid specifications.

4) Commercial Automobile Liability Insurance. Any liability associated with the use or operation of a vehicle by Contractor, its agents or employees, in connection with the performance of Services under this Contract shall not be the responsibility of the County.

C. Contractor agrees that, with respect to the above referenced insurance, all insurance contracts/policies will contain the following required provisions:

- 1) Additional Insureds. Name County, including its officers, elected officials, employees and authorized agents, as additional insureds (as the interest of each insured may appear) as to all applicable coverage.
- 2) This insurance shall not be canceled, materially changed, or non-renewed until after thirty (30) calendar days prior written notice to the County.
- 3) Provide for an endorsement that the "other insurance" clause shall not apply to the County where the County is an additional insured on the policy.
- 4) Provide for notice to the County to the person and at the address shown below by certified mail, return receipt requested, and full postage paid, sent to:

Dallas County Director of Purchasing
Records Building, 6th Floor
509 Main Street, Room 623
Dallas, Texas 75202-5799

5) Contractor agrees to waive subrogation, and each applicable policy of insurance shall state a waiver of subrogation, against County, including its elected officials, officers, employees, volunteers, agents and representatives, for injuries, including death, property damage and/or any other loss.

D. Contractor shall be solely responsible for all cost of any insurance as required here, any and all deductible or self-insured amount, which in no event shall exceed ten percent (10%) of the amount insured and in the event that an insurance company should deny coverage.

E. It is the intent of these requirements and provisions that Contractor's insurance covers all cost and expense so that the County, including its elected officials, officers, employees, volunteers, agents and representatives will not sustain any expense, cost, liability or financial risk as a result of the performance of Services under this Contract.

F. Insurance certificates. The certificates of insurance shall list the County as the certificate holder. Any and all copies of Certificates of Insurance shall reference this Contract for which the insurance is being supplied. All insurance policies or duly executed certificates for the same required to be carried by Contractor under this Contract, together with satisfactory evidence of the payment of the premium thereof, shall be delivered to the *Dallas County Director of Purchasing* located at the *Dallas County Records Building, 509 Main Street, 6th Floor, Dallas, Texas 75202* within ten (10) calendar days of execution and/or renewal of this Contract and upon renewals and/or material changes of such policies, but not less than fifteen (15) calendar days prior to the

expiration of the term of such coverage, or such non-delivery shall constitute a default of this Contract subject to immediate termination at County's sole discretion.

- G. All insurance coverage shall be on a per occurrence basis or a per claim basis if Contractor provides for five (5) year tail coverage, unless specifically approved in writing and executed by the County's Director of Purchasing and Risk Manager.
- H. All insurance required to be carried by Contractor and/or subcontractors under this Contract must be acceptable to the County in form and content, in its sole discretion. All policies shall be issued by an insurance company acceptable and satisfactory to County and authorized to do business in the State of Texas. Acceptance of or the verification of insurance by County shall not relieve or decrease the liability of the Contractor.
- I. Minimum insurance is a condition precedent to any work performed under this Contract and for the entire Term of this Contract, including any renewals or extensions. In addition to any and all other remedies County may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, or such insurance lapses, is reduced below minimum requirements or is prematurely terminated for any reason, County shall have the right to:
 - 1) Order Contractor to stop work hereunder, which shall not constitute a Suspension of Work;
 - 2) Withhold any payment(s) which become due to Contractor until Contractor demonstrates compliance with the requirements and assurance and proof acceptable to County that there is no liability to County for failure to provide such required insurance;
 - 3) At its sole discretion, declare a material breach of this Contract, which, at County's discretion, may result in:
 - a) termination of this Contract;
 - b) demand on any bond, as applicable;
 - c) the right of the County to complete this Contract by contracting with the "next low proposal." Contractor will be fully liable for the difference between the original Contract price and the actual price paid, which amount is payable to County by Contractor on demand; or
 - d) any combination of the above;
- J. Approval, disapproval or failure to act by the County regarding any insurance supplied by Contractor shall not relieve Contractor of full responsibility or liability for damages and accidents as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the Contractor from liability.
- K. Acceptance of the Services, or failure to act by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, associates, agents or subcontractors for the accuracy and competency of their Services; nor shall such acceptance be deemed an assumption of responsibility or liability by

County for any defect in the Services performed by Contractor, its employees, subcontractors, and agents.

- L. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this Contract.
- M. Survival. The provisions of this Section shall survive termination and/or expiration of this Contract, or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.
- N. Insurance Lapse. Pursuant to Section 94.73 of the Dallas County Code, if the Contractor fails to maintain the insurance required under the Contract continuously at all times during the period stated in the Contract, or otherwise has a lapse in any of the required insurance coverage, including workers' compensation coverage, the Contractor shall reimburse the County for any and all costs, including attorney's fees incurred by the County in curing said default. In the event of any insurance lapse, the County shall retain five percent (5%) of the value of the total Contract Sum for a period of six (6) months from the date of the cure of the insurance lapse or the date the Contract has ended, whichever is later, to cover the County's potential exposure to liability during the period of the insurance lapse.

In the event that the Contractor does not maintain insurance as required by the Contract, the Contractor shall immediately cure such lapse at the Contractor's sole cost and expense, and pay the County in full for all costs and expenses incurred by the County under the Contract as a result of the Contractor's failure to maintain insurance, including, but not limited to, any and all costs and reasonable attorney's fees relating to the County's efforts to cure such lapse in insurance coverage. Such costs and attorney's fees, which shall not exceed One Thousand Five Hundred and 00/100 Dollars (\$1500.00), shall be automatically deducted from monies owed to the Contractor by the County under the Contract. If the monies owed to the Contractor under the Contract are less than the amount required to cure the lapse in coverage, the Contractor shall pay such monies to the County upon written demand. Moreover, upon any lapse of the required insurance by the Contractor, the County shall immediately retain five percent (5%) of the total value of the Contract to cover the County's potential exposure to liability during the period of such insurance lapse. The five percent (5%) retainage shall be immediately deducted from any monies due to the Contractor by the County under the Contract and held by the County for a period of six (6) months from the date of the cure of the insurance lapse or a period of six (6) months from the date the Contract has terminated, expired, or otherwise ended, whichever is later. If no claim is received by or lawsuits filed against the County for any applicable matters, accidents or injuries that occurred during the lapse of insurance, the retainage shall be promptly returned to the Contractor upon written request. Notwithstanding the foregoing, in the event a claim is received by or lawsuit is filed against the County for applicable matters, accidents, or injuries that occurred during the Contractor's insurance lapse, the County shall use the retainage to defend, pay costs of defense, or settle any and all such claims, lawsuits, or judgments, with any and all amounts in excess of the retainage to be paid by the Contractor upon written demand by the County.

11. TERMINATION / SUSPENSION

- A. Suspension. Should County desire to suspend the Services, but not terminate the Contract, County shall issue a written order to stop work. The written order shall set out the terms of the suspension. Contractor shall stop all Services as set forth in this Contract and will cease to incur costs to County during the term of the suspension. Contractor shall resume work when notified to do so by County in a written authorization to proceed. If a change in the terms and conditions of payment for Services of this Contract is necessary because of a suspension, a mutually agreed Contract amendment will be executed in accordance with this Contract.
- B. Termination. County may, at its option and without prejudice to any other remedy to which it may be entitled to at law or in equity, or elsewhere under this Contract, terminate this Contract, in whole or part, by giving thirty (30) calendar days prior written notice thereof to Contractor with the understanding that all Services being performed under this Contract shall cease upon the date specified in such notice. County shall compensate the Contractor in accordance with the terms of this Contract for the Services performed prior to the date specified in such notice. In the event of cancellation, Contractor shall cease any and all Services under this Contract on the date of termination and to the extent specified in the notice of termination. Upon receipt of such notice, Contractor shall not incur any new obligations or perform any additional Services and shall cancel any outstanding obligations or Services to be provided. To the extent funds are available and reimbursement is permitted, County will reimburse Contractor for non-canceled obligations that were incurred prior to the termination date. Upon termination of this Contract as herein above provided, any and all unspent funds that were paid by County to Contractor under this Contract and any and all County data, documents and information in Contractor's possession shall be returned to County within five (5) business days of the date of termination. In no event shall County's termination of this Contract, for any reason, subject County to liability.
- 1) Without Cause: This Contract may be terminated, in whole or in part, without cause, by County upon thirty (30) calendar days prior written notice to Contractor.
 - 2) With Cause: County reserves the right to terminate this Contract immediately, in whole or in part, at its sole discretion, for the following reasons:
 - a) Lack of, or reduction in, funding or resources;
 - b) Non-Performance. Contractor's non-performance of the specifications of this Contract or non-compliance with the terms of this Contract shall be a basis for termination of the Contract by the County. Termination, in whole or in part, by the County under this Section may be made at County's option and without prejudice to any other remedy to which County may be entitled to at law or in equity, or elsewhere under this Contract, by giving thirty (30) days written notice to Contractor with the understanding that all Services being performed under this Contract shall cease upon the date specified in such notice. County shall not pay for work, equipment, Services or supplies that are unsatisfactory or unauthorized. At County's sole discretion and with written notice by County, Contractor may be given a reasonable opportunity prior to termination to correct any deficiency in the work or Services performed under this Contract. County will consider a reasonable time to be thirty (30) calendar days to cure any problems and/or

deficiencies with Contractor's performance, such problems and/or deficiencies being determined by County. Nothing herein, however, shall be construed as negating the basis for termination for non-performance and shall in no way limit or waive County's right to terminate this Contract under any other provisions herein.

- c) Contractor's improper, misuse or inept performance of Services under this Contract;
- d) Contractor's failure to comply with the terms and provisions of this Contract;
- e) Contractor's submission of invoices, data, statements and/or reports that are incorrect, incomplete and/or false in any way;
- f) In County's sole discretion, if termination is necessary to protect the health and safety of clients;
- g) If Contractor becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver or similar officer, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key employees; and/or
- h) Contractor's inability to perform under this Contract due to judicial order, injunction or any other court proceeding.

12. NOTICE

Any notice to be given under this Contract shall be deemed to have been given if reduced to writing and delivered in person or mailed by overnight or Registered Mail, postage pre-paid, to the party who is to receive such notice, demand or request at the addresses set forth below. Such notice, demand or request shall be deemed to have been given three (3) business days subsequent to the date it was so delivered or mailed.

To: County:

Keta Dickerson, Program Manager
Dallas County Divert Court
133 N. Industrial Blvd., 5th Floor A18
Dallas, TX 75207

w/a copy to:

Chong Choe
Assistant District Attorney
411 Elm Street, 5th Floor
Dallas, TX 75202

To Contractor:

Larry Vanderwoude, President/CEO
Recovery Healthcare Corporation
9090 North Stemmons Freeway, Suite A
Dallas, TX 75247
(214) 819-1400

Lenora Sevillian
Purchasing Contracts Supervisor
Dallas County Purchasing Department
509 Main Street, 6th Floor, Room #623
Dallas, TX 75202

13. SEVERABILITY

If any provision of this Contract is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions in this Contract. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

14. SOVEREIGN IMMUNITY

This Contract is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and state laws. The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver of any immunities from suit or from liability that the County has by operation of law. Nothing in this Contract is intended to benefit any third party beneficiary.

15. COMPLIANCE WITH LAWS AND VENUE

In providing Services required by this Contract, Contractor must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, regulations, grant requirements, licenses, legal certifications, or inspections required for the Services, facilities, equipment, or materials. This Contract shall be governed by Texas law and exclusive venue for any legal action arising from this Contract shall lie in Dallas County, Texas.

16. AMENDMENTS AND CHANGES IN THE LAW

No modification, amendment, novation, renewal or other alteration of this Contract shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition or deletion to the terms of this Contract which are required by changes in federal or state law are automatically incorporated herein without written amendment to this Contract and shall be effective on the date designated by said law.

17. ENTIRE AGREEMENT

This Contract, including all Exhibits and any attachments, constitutes the entire agreement between the parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written.

18. BINDING EFFECT

This Contract and the respective rights and obligations of the parties hereto shall inure to the benefit and be binding upon the successors and assigns of the parties hereto, as well as the parties themselves.

19. GOVERNMENT FUNDED PROJECT

If Contract is funded in part by either the State of Texas or the federal government, the Contractor agrees to timely comply without additional cost or expense to County, unless otherwise specified herein, to any statute, rule, regulation, grant, contract provision or other state or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the Services rendered under the terms of this Contract.

20. DEFAULT/CUMULATIVE RIGHTS/MITIGATION

It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Contract are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Contractor has a duty to mitigate damages.

21. FISCAL FUNDING CLAUSE

Notwithstanding any provisions contained herein, the obligations of the County under this Contract are expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Contract and any extensions thereto. Contractor shall have no right of action against County in the event County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Contract or failure to budget or authorize funding for this Contract during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Contract by written notice to Contractor at the earliest possible time prior to the end of its fiscal year.

22. COUNTERPARTS, NUMBER/GENDER AND HEADINGS

This Contract may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Contract shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Contract.

23. PREVENTION OF FRAUD AND ABUSE

Contractor shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Contract. Any known or suspected incident of fraud or program abuse involving Contractor's employees or agents shall be reported immediately by the County to the Office of the Inspector General for appropriate action. Moreover, Contractor warrants to be not listed on a local, county, state or federal consolidated list of debarred, suspended and ineligible contractors and grantees. Contractor and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds collected pursuant to this Contract does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. Contractor shall, upon notice by County, refund

expenditures of the Contractor that are contrary to this Contract and deemed inappropriate by the County.

24. INDEPENDENT CONTRACTOR

Contractor, including its agents or employees, is an independent contractor and not an agent, servant, joint enterpriser, joint venturer or employee of the County, and is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work covered under this Contract.

25. ASSIGNMENT

Contractor assures that it will not transfer or assign its interest in this Contract without prior written consent of County. Contractor understands that in the event that all or substantially all of Contractor's assets are acquired by another entity, Contractor is still obligated to fulfill the terms and conditions of this Contract. County approval to transfer or assign Contractor's interest in this Contract to an entity that acquires all or substantially all of Contractor's assets is subject to formal approval by the County Commissioners Court. In the event of the assignment or sale of Contractor's assets, the County, at its option, may terminate this Contract and at no cost to the County retain the use of any of the deliverables and other items provided under this Contract.

26. SUBCONTRACTING

Contractor may not enter into agreements with subcontractors for delivery of the designated Services outlined in this Contract without prior written consent of the County, which consent shall not be unreasonably withheld. The costs of all subcontracted services are included in the fees paid herein. Subcontracts, if any, entered into by the Contractor will be in writing and subject to all requirements herein. Contractor agrees that Contractor is solely responsible to County for the performance of this Contract. Contractor shall pay all subcontractors in a timely manner. County shall have the right to prohibit Contractor from using any subcontractor.

27. CONTRA PROFERENTUM

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, the Agreement shall not be construed against the party who drafted the Agreement and such party shall not be responsible for the language used.

28. CONFIDENTIAL INFORMATION AND OWNERSHIP

- A. Ownership of County Data. All County data shall remain the property of County. The County data shall not be otherwise used, disclosed, sold, assigned, leased or provided, or commercially exploited by or on behalf of Contractor and its personnel, including, without limitation, employees, officers, agents, subcontractors, invitees, third party vendors, or assigns (collectively, "Contractor"), to any third party in any respect without County's written consent. Contractor shall not delete or destroy any County data or media on which County data resides without prior written authorization of County (acting through the County Commissioners Court). At no cost to County, Contractor shall upon request promptly return to County, in the format and on the media in use as of the date of the request, any and all requested portion of any County data it may possess or control.

- B. Contractor shall not disclose privileged or confidential communications or information acquired in the course of the performance of the Services under this Contract, unless authorized by law. Contractor agrees to safeguard and adhere to all confidentiality, privacy and security requirements according to this Contract and the applicable federal, state and local rules and regulations for all information deemed confidential.
- C. Confidentiality. "Confidential Information" means information designated as confidential or which would be recognized as confidential by a reasonable person from its nature and the circumstances surrounding its disclosure. Confidential Information includes, without limiting the generality of the foregoing, County software, County data, the terms of this Contract, and information: (1) relating to disclosing Party's business, policies, strategies, operations, finances, plans or opportunities, including the identity of, or particulars about, the County's clients, customers or service providers; (2) marked or otherwise identified as confidential, restricted, secret or proprietary, including, without limiting the generality of the foregoing, information acquired by inspection or oral disclosure provided such information acquired by inspection or oral disclosure was identified as confidential at the time of disclosure or inspection; (3) financial/operating risk patterns and specific audit sample techniques of County; or (4) recognized by statute as confidential, including information relating to individual health, mental health, sexually transmitted diseases, and HIV-AIDS.
- D. Exceptions. Notwithstanding the foregoing, Confidential Information does not include information that the receiving Party can establish: (1) has become generally available to the public or commonly known in either Party's business other than as a result of a breach by the receiving Party of any obligation to the disclosing Party; (2) was known to the receiving Party prior to disclosure to the receiving Party by the disclosing Party by reason other than having been previously disclosed in confidence to the receiving Party; (3) was disclosed to the receiving Party on a non-confidential basis by a third party who did not owe an obligation of confidence to the disclosing Party with respect to the disclosed information; (4) was independently developed by the receiving Party without any recourse to any part of the Confidential Information; or (5) in the case of County, any information related to the Services which County has publicly disclosed in connection with this Contract, including, without limitation, information of an operational, technical or financial nature related to County.
- E. Use of Confidential Information. During the term of this Contract, the receiving Party may: (1) disclose Confidential Information received from the disclosing Party only to its employees, agents, officers, directors, attorneys, and subcontractors who have a need to know such information exclusively for the purpose of performing pursuant to this Contract and who have executed a nondisclosure agreement containing provisions no less restrictive than those contained herein, or who are subject to other equivalent means to ensure confidentiality; (2) reproduce the Confidential Information received from the disclosing Party only as required to perform pursuant to this Contract; and (3) disclose Confidential Information as required by law, provided the receiving Party gives the disclosing Party prompt notice prior to such disclosure to allow the disclosing Party to make a reasonable effort to obtain a protective order or otherwise protect the confidentiality of such information. Except as otherwise specifically provided in this Contract, the receiving Party shall not during the term and after expiration or earlier termination of this Contract: (1) disclose, in whole or in part, any Confidential Information received directly or indirectly from the disclosing Party; or (2) sell, rent, lease, transfer, encumber, pledge, reproduce, publish, market, transmit, translate, modify, reverse

engineer, compile, disassemble or otherwise use the Confidential Information in whole or in part.

- F. Care. The receiving Party shall exercise the same care in preventing unauthorized disclosure or use of the Confidential Information that it takes to protect its own information of a similar nature, but in no event less than reasonable care.
- G. Return of Confidential Information. Immediately upon the disclosing Party's request, and at the expiration or earlier termination of this Contract or any other applicable renewal or extension hereto, the receiving Party shall return or destroy all materials containing Confidential Information, including without limitation, all originals, copies, reproductions and summaries, and all copies of Confidential Information present on magnetic media, optical disk, volatile memory or other storage device, in a manner that assures the Confidential Information is rendered unrecoverable.
- H. Notwithstanding the foregoing, County agrees, to the extent permitted by the Public Information Act, to keep confidential (and store in a secure area with limited access) and will not copy, publish, sell, exchange, disclose, or provide to others or use any information, documents or data, provided to or disclosed to County, or any information related to this Contract, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, for any purposes other than performing County's obligations under this Contract, unless prior written notification is given by County that such specified item will be released under the Public Information Act.
- I. Confidential or Proprietary Marking. Any information or documents the Contractor uses in the performance of the Services provided under this Contract that Contractor considers confidential or proprietary or that contains trade secrets must be clearly marked accordingly. This marking must be explicit as to the designated information. The designation, however, may not necessarily guarantee the non-release of the documents or information under the Texas Public Information Act or otherwise required by law.
- J. County Software. County shall identify the County software, if any, that Contractor is authorized to use to perform the Services pursuant to this Contract and specify the rights of Contractor to use the County software for the benefit of the County.
- K. Contractor Software. Contractor shall identify any Contractor software that will be used to provide the Services under this Contract. Without the fully informed written consent of the County (acting through the County Commissioners Court, County Commissioners Court Administrator, or County Contract Manager), Contractor shall not use in performing the Services pursuant to this Contract any Contractor software that is not commercially available to County.
- L. Use of Concepts. Nothing in this Contract shall restrict a party from the use of any ideas, concepts, know-how, methods or techniques that such party, individually or jointly, develops or discloses under this Contract or obtains from third parties, except to the extent that such use infringes the other party's patent rights, copyrights or other intellectual property rights or involves a disclosure or use of the other party's Confidential Information.

- M. Security. To the extent Contractor has access to County facilities and systems, Contractor will comply with the security procedures that are in effect during the Term of this Contract for the security of County's facilities and County data. In the event that Contractor personnel may have the ability to defeat systems security provisions on devices containing related and unrelated confidential information or data, Contractor covenants that it shall not access such County data or information or assert waiver of these confidentiality requirements by virtue of Contractor's access.
- N. Survival. The provisions of this Section shall survive cancellation, termination and/or expiration of this Contract, or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.

29. ASSURANCES

- A. Contractor agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
- B. Contractor assures that neither it nor its employees, volunteers, agents or officers shall receive personal benefits, commission, consideration, or gains in performance of the Services outlined in this Contract. Furthermore, Contractor agrees to disclose prior to commencement of a particular assignment any material/financial interests that it or a third party may have in the Services required under this Contract.
- C. No-Discrimination. This Contract is subject to applicable federal and state laws and executive orders, including the Fair Labor Standards Act of 1938, relating to equal opportunity and nondiscrimination in employment. Neither Contractor nor its agents or subcontractors shall discriminate in their employment practices against any person by reason of disability, age, race, creed, national origin, color, religion, sex, political affiliation, or veteran status. In addition Contractor assures that no person will, on the grounds of disability, age, race, creed, national origin, color, religion, sex, political affiliation, or veteran status, be excluded from, be denied the benefit of or be subjected to discrimination under any program or activity funded in whole or in part under this Contract. Contractor agrees to comply, and to cause its agents and subcontractors to comply, with the provisions of said laws and orders to the extent any such laws and orders are applicable in the performance of this Contract.
- D. Contractor assures that funds received pursuant to this Contract will not be used for lobbying the Texas legislature or any governmental agency in connection with a particular contract.
- E. Contractor shall pay all subcontractors in a timely manner. County shall have no liability to any subcontractors in the event Contractor does not pay or delays payment to any subcontractors. At termination or expiration of this Contract, Contractor shall deliver to County an affidavit of all bills paid. Final payment shall be contingent upon receipt of such affidavits as resolution of all accounting for which County is or may be liable under this Contract.
- F. Under Section 231.006, Texas Family Code, Contractor certifies to County that the owner(s) of at least a 25% interest in the organization is not delinquent in any child support obligation that renders him/her ineligible to receive payment under the terms of

this Contract. Contractor hereby acknowledges that this Contract may be terminated and payment may be withheld if this Certification is inaccurate.

- G. Contractor certifies that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency.
- H. Contractor assures that it shall not receive personal benefits or gains in performance of the Services outlined in this Contract. Furthermore, Contractor agrees to disclose prior to commencement of a particular assignment any material/financial interests that it or a third party may have in the Services required under this Contract.
- I. Best Efforts to Minimize Costs to County. Contractor shall use its best efforts to complete each assigned task in as economical a manner as possible and to minimize any charges incurred in connection therewith to the maximum extent possible, consistent with Contractor's other obligations under this Contract.
- J. Failure to comply with any of these assurances or any other requirements specified within this Contract will put Contractor in default and/or breach of this Contract and may result, at the sole discretion of County, in the disallowance of funds and the withholding of future awards, in addition to any other remedies permitted by law.
- K. Governmental Consent. Contractor warrants that no consent, approval, or withholding of objection is required from any governmental authority with respect to the entering into or the performance of this Contract.
- L. Corporate Good Standing. Contractor represents and warrants that it: (1) is a non-profit corporation duly incorporated, validly existing and in good standing; (2) has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder; (3) is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it except when the failure to be so licensed, authorized or qualified would not have a material adverse effect on Contractor's ability to fulfill its obligations hereunder.

30. CONTRACTOR'S WARRANTIES

- A. No Actions, Suits, or Proceedings. Contractor warrants that there are no actions, suits, or proceedings, pending or threatened, that will have a material adverse effect on Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will notify County immediately if Contractor becomes aware of any action, suit, or proceeding, pending or threatened, which will have a material adverse effect on Contractor's ability to fulfill the obligations under this Contract.
- B. Warranty of Contractor's Capability. Contractor warrants that it is financially capable of fulfilling all requirements of this Contract and that Contractor is a validly organized entity that has the authority to enter into this Contract. Contractor warrants that it is not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into this Contract.

- C. Professional Quality. Contractor warrants to County that all materials and Services will be of professional quality conforming to generally accepted practices, and that all Services provided under this Contract will be performed in a manner consistent with that degree of care, qualification and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. If there are no applicable or recognized professional standards in the applicable area or areas of expertise required to perform such Services, then Contractor will perform all Services in a good and professional manner that meets County's goals and objectives as stated herein as well as otherwise adds value to and/or improves the performance of County's expectations, objectives and purposes as stated in this Contract. Any work that is determined by County to be less than professional quality will be corrected without charge. This warranty extends for ninety (90) business days past termination or expiration of this Contract. This warranty is limited to rework of the unsatisfactory product without change to the original specifications and without regard to the amount of the effort expended on the original work product.

31. TRANSITION SERVICES REQUIRED OF CONTRACTOR

Upon notice of termination and/or expiration of this Contract, the County shall immediately have the right to audit any and all records of Contractor relating to this Contract. Moreover, upon termination and/or expiration date of this Contract, Contractor agrees to transition the Services provided herein in a cooperative manner and provide anything requested from the County at no additional cost, including, but not limited to the following, upon date of termination and/or expiration: (i) all Contract and Services documentation identified in a complete, neat and orderly manner; and (ii) good faith pledge to cooperate with County upon transition of Services to another contractor or County department providing the same or similar Services; and (iii) final accounting of all income from the Contract; and (iv) downloading and removal of all County information from the Contractor's equipment and software; and (v) removal of Contractor's Services without affecting the integrity of County's systems; and (vi) all records and County property. This provision shall survive Contract termination.

32. TAX

Dallas County, as a county of the State of Texas, is exempt from the payment of Texas state and local sales, excise, and use taxes pursuant to Tex. Tax Code § 151.309, and shall therefore not be liable or responsible to the Contractor for the payment of such taxes under this Contract.

The fees paid to Contractor pursuant to this Contract are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable effective date of this Contract and based upon or measured by Contractor's cost in acquiring or providing products and/or Services and related materials and supplies furnished or used by Contractor in performing its obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by Contractor.

Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by Contractor for work performed under the terms of this Contract and agrees to indemnify and save harmless the County from any such contribution or taxes or liability.

COUNTY OF DALLAS §

STATE OF TEXAS §

CONTRACT
between
DALLAS COUNTY, TEXAS ("County")
and
NEXUS RECOVERY CENTER, INC. ("Contractor")
for

SUBSTANCE ABUSE TREATMENT SERVICES TO COUNTY PROBLEM SOLVING COURTS

1. PURPOSE

This Contract is entered into by and between Contractor, a 501(c)(3) nonprofit corporation, and County, a governmental entity, in accordance with the Commissioners Court Order, County's Request for Proposal No. 2015-012-6466 ("RFP 2015-012-6466"), Contractor's RFP response relating to its Substance Abuse Treatment Services dated February 16, 2015 ("Contractor's Proposal"), and pursuant to the authority granted by the applicable statutes, including those under the Texas Government Code, Texas Health and Safety Code Chapter 469, and Texas Code of Criminal Procedure, for substance abuse treatment services relating to the drug court program ("Program") for the Dallas County courts, including the Dallas County Divert Court and the Dallas County Mental Illness Diversion Court (collectively, the "County Problem Solving Courts").

2. TERM

Unless otherwise stated in this Contract, the Term of this Contract will be from April 30, 2015 through April 29, 2016. This Contract may be extended annually for three additional years upon mutual written agreement of the parties hereto.

3. INCORPORATED DOCUMENTS

All related documents are incorporated herein by reference for all purposes including, without limitation, the following:

- 1) RFP 2015-012-6466; and
- 2) Contractor's Response to RFP 2015-012-6466 ("Contractor's Response").

4. ORDER OF PRECEDENCE OF RELATED DOCUMENTS

In the event of a conflict between this Contract, RFP 2015-012-6466, and Contractor's Response, the following order of precedence shall apply:

- 1) this Contract;
- 2) Contractor's Response; then
- 3) RFP 2015-012-6466.

5. SCOPE OF SERVICES

A. Contractor shall perform and complete the Services as stated in this Contract, in RFP 2015-012-6466 and in Contractor's Response, all of which are incorporated herein by reference for all purposes.

B. Project Managers. Contractor and County at the start of this Contract shall assign specific or a chain of Project Managers ("Managers") who can address all administrative, technical, and contractual issues effectively and efficiently. The Managers will be responsible for the management and implementation of this Contract and to serve as the primary contact for each party throughout the Term of this Contract. Each party represents that its Manager is and will be fully qualified and authorized to perform the tasks assigned to Manager; provided, however, that any significant deviation from the intent of this Contract, any increase in cost to the County, or any extension to the deliverable due dates will not be effectively unless signed by the authorized Signatories for both parties via a formal Amendment to the Contract.

- 1) Removal of Manager. Upon at least fourteen (14) calendar days advance written notice, and with the written consent of the other party, which consent shall not be unreasonably withheld or delayed, either party may replace its Project Manager.
- 2) County Project Manager ("County Manager"). The County Manager, or the County Manager's designated representative ("County Representative"), will be responsible for coordinating all aspects of service relating to this Contract. Contractor will work under the direction of the County Manager or County Representative throughout the Term of the Contract.

The County Manager or County Representative shall decide all questions that may arise as to the quality and acceptability of any Services performed under this Contract. If, in the opinion of the County Manager or County Representative, the performance was unsatisfactory, the County shall notify the Contractor of such and the Contractor shall immediately make such performance acceptable to the reasonable satisfaction of County at no additional cost to County.

- 3) Contractor's Project Manager ("Contractor Manager"). Contractor shall assign or designate, without additional costs to County, a Contract Manager, for and during any and all performance of Services by Contractor, who shall be fully qualified and authorized to perform the tasks assigned to him/her and who shall, without limitation:
 - a) Be reasonably accessible;
 - b) Assume group coordination, management, monitoring, administrative, and leadership responsibilities for Contractor personnel that perform the Services;
 - c) Have the ability to respond efficiently and effectively to County's immediate concerns during the performance of these Services, including the ability to lead and direct Contractor personnel while they are performing the Services.

C. Personnel.

- 1) Personnel Qualifications. Contractor warrants that all personnel it uses under this

Contract (the "Contractor Personnel") shall be: employees of Contractor or, if applicable, Contractor's subcontractor(s), fully qualified and licensed to perform the tasks assigned them, and in compliance with all applicable immigration laws. Contractor shall identify to County all third party contractors and subcontractors, and their roles and responsibilities, upon request. Contractor shall be solely responsible for payment of all wages, benefits, worker's compensation, disability benefits, unemployment insurance, as well as for withholding any required taxes for all Contractor Personnel in accordance with applicable federal, state, and local law. Contractor agrees to promptly (within two (2) business days), provide County with information regarding individual Contractor Personnel or proposed Contractor Personnel as County may reasonably request.

- a) Compensated Substance Abuse counselors who render clinical services must have a license from the Texas Department of State Health Services ("DSHS") in compliance with the Counselor and Qualified Professional licensure rules;
- b) Must maintain Facility Licensure Standards by DSHS for Intensive Residential, Residential, Detoxification, Outpatient and/or Intensive status.

2) Personnel Cooperation. Each party recognizes the importance of cooperation among their respective employees, and each party will use commercially reasonable efforts to ensure positive working relationships between the parties so as to ensure timely completion of their respective tasks.

3) Replacement or Removal of Contractor Personnel.

a) *County Initiated Request of Removal of Contractor Personnel.* County may, upon a written notice to the Contractor Manager or the person signing this Contract, require Contractor to remove an individual immediately from providing Services for the following reasons: violation of the terms and conditions of this Contract; violation of County's work rules and regulations; criminal activity; violation of state, federal, or municipal statutes; and engagement by said individual in activities that could be detrimental to County or County personnel, as determined by County in its sole discretion. Contractor shall replace the removed individual with other Contractor Personnel as appropriate.

b) *Replacement of Contractor Personnel.* Contractor shall have the right to make reasonable and necessary changes to the list of Contractor Personnel in order to accomplish the purposes of this Contract with prior written notice to the County Manager. Any changes in the Contractor Personnel shall be made utilizing persons of similar background, experience and credentials and shall be for the benefit of County. Contractor shall not be required to obtain County's prior approval of temporary changes due to vacation or illness of Contractor Personnel, but must provide immediate written notice to the County Manager. If the temporary change in Contractor Personnel is for a period to exceed fifteen (15) business days, Contractor shall be obligated to seek the County's approval, which will not be unreasonably withheld or delayed.

D. Provide detoxification, intensive residential and supportive residential substance abuse treatment services to substance abusing offenders (hereinafter called the "Participants") that the staff of the Problem Solving Courts have determined to be unable to pay in part

and/or in total, for these services;

- E. Provide all necessary personnel, equipment, materials, supplies, facilities to carry out the services;
- F. Coordinate with County to identify needs of the Participants that are beyond the scope of Contractor's substance abuse treatment services and make appropriate referrals in such circumstances;
- G. Develop and implement procedures for services to Participants with concurring disorders and/or mental and physical disabilities;
- H. Establish and maintain County Court-approved written policies and procedures relating to services for Participants, including those relating to, without limitation, admission, discharge, discharge planning, treatment, transportation, safety and security, clinical supervision, referral activities, house management, documentation of services, incident reporting and resolution. These policies and procedures shall have the express approval by the County courts prior to implementation;
- I. Provide administrative services to ensure a smooth and maximum participation by Participants, including:
 - 1) Cooperate and coordinate with County staff at all levels;
 - 2) Provide orientation to Participants regarding services and support resources;
 - 3) Contact the County Manager by both phone and email within twenty-four (24) hours of failure of any Participant to comply with the Program, including, without limitation, his/her treatment plan, participation schedule, failure to show for initial appointment, and/or unauthorized departures;
 - 4) Document at least on a weekly basis the Participant's progress, level of participation and compliance with treatment goals and objectives and provide, in writing, weekly progress reports to the appropriate Problem Solving Court staff on each Participant at no additional cost to County;
 - 5) Transport residential Participants to Problem Solving Court at least once a month to meet face to face with the Judge for assessment of progress in the treatment program;
 - 6) Pick up Participants from the Dallas County jail when appropriate;
 - 7) Ensure the safety and security of Participants, while providing substance abuse treatment services;
 - 8) Refer Participant back to the County for further action if Contractor determines that Participant needs additional or different treatment services. The process by which this action will occur will be addressed in the Problem Solving Court's Policies and Procedures;
 - 9) Submit discharge summary reports to the applicable Problem Solving Court Case

Staff immediately upon discharge of Participants from Contractor's program;

10) Comply with County policies and procedures as set forth by the Program;

J. Provide testimonies in courts at the request of County for no additional cost to County;

6. PAYMENT FOR SERVICES

A. Contractor agrees to submit to the applicable Problem Solving Court complete, fully documented and accurate itemized statements of invoices with appropriate/applicable attachments, statistical and programmatic documentation reports, as required by County for the performed Services no later than the fifteenth (15th) of the calendar month following the prior month's Services.

B. Each statement shall be in a form acceptable to the Dallas County Auditor, and shall include details of the Services rendered as may be requested by the Auditor for verification purposes. The statement shall, at a minimum, include a description of the Services, the day(s) and the amount of time during the day(s) that Contractor performed the Services, and the total amount billed for Services rendered.

C. After receipt of the statement, the applicable Problem Solving Court shall review the statement and approve it with any modifications deemed appropriate and thereafter forward the statement with any modifications to the County Auditor for payment. **Contractor shall hold harmless and indemnify the County for any discrepancy between the amount submitted for payment and the actual payment finally approved by the County.**

D. Upon receipt of statement, County agrees to compensate Contractor within thirty (30) business days at the following rates:

| Type of Service | Unit | Divert Rate |
|---|------|-------------|
| Intensive Residential | Day | \$ 85.00 |
| Women and Children Residential (for women w/accompanying children) | Day | \$189.00 |
| Detoxification | Day | \$180.00 |
| Outpatient Counseling – Individual | Hour | \$ 54.00 |
| Outpatient Counseling – Group | Hour | \$ 17.00 |

County will make payment to Contractor upon receipt of a verified and proper billing for Services actually rendered. Any payments by County to Contractor may be withheld if the Contractor fails to comply with County's contract provisions, deliverables, or other requirements relating to Contractor's performance of work and services under this Contract. County shall pay Contractor only for those costs that are allowable under applicable laws, including, without limitation, the federal rules, regulations, cost principles, and those stated in this Contract. County shall have the right to withhold all or part of any payments to the Contractor to offset any payment or reimbursement made to Contractor for ineligible expenditures and/or undocumented units of service billed.

E. Not to Exceed Amount. The maximum amount to be paid under this Contract is one hundred seventy-five thousand and 00/100 Dollars (\$175,000.00). This Contract's

estimated amount is subject to being either decreased or increased at the County's sole discretion. Program funding may vary from year to year based on the availability of funds.

- F. Contractor agrees that a temporary delay in making payments due to the County's accounting and disbursement procedures shall not place the County in default of this Contract and shall not render the County liable for interest or penalties, provided such delay shall not exceed thirty (30) calendar days after its due date. Any payment not made within thirty (30) calendar days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.
- G. Prior Debts. County shall not be liable for costs incurred or performances rendered by Contractor before or after the Contract Term; for expenses not billed to County within the applicable time frames set forth in this Contract; or for any payment for Services or activities not provided pursuant to the terms of this Contract.
- H. Administrative Controls. Contractor shall establish, document and maintain adequate administrative and internal controls to ensure that only allowable and valid costs are billed to County for Services intended under this Contract. Contractor must refund any expenditures or payments that are not within the scope or intent of this Contract.

7. EXPENSES

Unless prior written approval by County is obtained, Contractor shall be responsible for all mileage, parking fees, and/or other expenses related to the fulfillment of the requirements of the Contract. Upon County's prior written approval for travel, living, and out of pocket expenses, County shall reimburse Contractor for mileage and other expenses related to the fulfillment of the requirements of the Contract to the extent that such expenses are reasonably consistent with County policies for such reimbursements and expenses.

8. REPORTING AND ACCOUNTABILITY

- A. Contractor agrees to submit all required documentation and reports on a timely basis and in accordance with the specified time frames.
- B. Contractor agrees that all information, data and supporting documentation that relates to the Services under this Contract shall remain the property of the County.
- C. Should County determine it reasonably necessary, Contractor shall make all of its records and books reasonably related to this Contract available without delay to authorized County personnel to fulfill inspection or auditing deadlines and purposes or to substantiate the provisions of Services under this Contract. Required documents may include, but are not limited to, documents pertaining to Services provided for purposes of programming, creation and modification of data fields, and records of telephone hours of support provided.
- D. Contractor agrees to make available, at reasonable times and for reasonable periods, those supporting documents pertaining to Services. All documents shall be maintained and kept by Contractor for a minimum of four (4) years and ninety (90) calendar days after the termination of the Contract period. If any litigation, claim or audit involving these records begins before the specified period expires, Contractor must keep the

records and documents until the later occurrence of either the end of an additional four (4) years and ninety (90) calendar days from the date of court filings/audit findings, or until all litigation, claims or audit findings are resolved.

E. Disclosure by Contractor to County. Contractor is required to disclose to County without delay the following:

- 1) Any receipt of funds by Contractor other than, or in addition to, the funds paid by County for the Services to Participants under this Contract. Both parties agree that Contractor shall reimburse County for the portion of such funds attributed to the provision of Services under this Contract;
- 2) Any reduction of compensation rate for Services to other clients. Both parties agree that Contractor shall charge County the same reduced rates for those Services to Participants; and
- 3) Report any actions or citations by any other governmental, accrediting or licensing agencies that may affect Contractor's, including its employees', officers', and agents' licensure status or ability to provide the Services hereunder.

9. INDEMNIFICATION

To the fullest extent authorized by law, Contractor, including its assigns, subcontractors, officers, directors, employees (collectively, "Contractor") shall forever waive, release, indemnify and hold harmless County, its Commissioners, Judge, assigns, officers, directors, employees (collectively, "County") from and against any and all losses, damages, injuries (including death), causes of action, claims, demands, liabilities, judgments, suits, losses, damages, fines, assessments, penalties, adverse awards and expenses (whether based upon tort, breach of contract, patent, trademark or copyright infringement, or other intellectual property infringement, failure to pay employee taxes or withholdings, failure to obtain worker's compensation insurance, or otherwise), whether known or unknown, including, without limitation, legal and related legal fees and expenses, of any kind or nature arising out of or on account of, or resulting from (1) any actual or alleged intentional or negligent act or omission of, or default in the performance of, attempted performance of, or failure to perform, its obligations pursuant to this Contract by Contractor, (2) Contractor's involvement in the specified services under this Contract, (3) any terms, conditions, or underlying provisions of this Contract, including but not limited to, any premises or special defect known or unknown to County, and any injury to individuals present during Contractor's involvement or provision of Services under the terms and conditions of this Contract, including willful acts such as assault, copyright, licensing and patent infringement relating to any software and/or equipment provided by Contractor; and wrongful imprisonment or other intentional torts as a result of incorrect and/or scrambled information downloaded from any software and/or equipment provided by Contractor, and (4) the selection, provision, misuse, use or failure to use, by Contractor or any person or entity, of any medical devices, tools, supplies, materials, equipment, or any other devices, tools, supplies, materials, equipment, or vehicles (whether owned or supplied by County, or any other person or entity) in connection said work or operations;

AND FURTHER, Contractor, to the fullest extent allowed by law, agrees to waive, release, indemnify and hold harmless County against any and all losses, damages, injuries

(including death), causes of action, claims, demands, liabilities, judgments, suits, fines, assessments, penalties, adverse awards and/or other expenses, of any kind or nature whatsoever (whether based upon tort, breach of contract, patent, trademark or copyright infringement, or other intellectual property infringement, failure to pay employee taxes or withholdings, failure to obtain worker's compensation insurance, or otherwise), including, without limitation, legal and related legal fees and expenses, of any kind or nature that are incurred by or sought to be imposed on County arising out of or on account of, or resulting from injury (including death), whether known or unknown, including, but not limited to, exposure to any disease, by any manner or method whatsoever, or damage to property (whether real, personal or inchoate), arising out of or in any way related (whether directly or indirectly, causally or otherwise) to the Contract and/or the performance of, attempted performance of, or failure to perform, operation or work by County, its contractors, or its subcontractors, and/or any other person or entity. This indemnification shall apply, whether or not any such injury or damage has been brought on any theory of liability, intentional wrongdoing, strict product liability, County's negligence, or breach of non-delegable duty. Contractor further agrees to defend (at the election of County) at its sole cost and expense against any claim, demand, action or suit for which indemnification is provided herein.

Approval and acceptance of Contractor's Services by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor for the accuracy and competency of their Services; nor shall such approval and acceptance be deemed to be an assumption of such responsibility by the County for any defect, error or omission in the Services performed by Contractor in this regard. Contractor shall defend, hold harmless and indemnify the County for damages resulting from such defects, errors or omissions.

No Indemnification by County. Contractor acknowledges and agrees that Dallas County does not have the ability under Article XI, Section 7 of the Texas Constitution to indemnify Contractor or any other third party for damages arising under this Contract.

Survival. The provisions of this Section 9 shall survive termination, expiration and/or cancellation of this Contract, or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.

10. INSURANCE

- A. Without limiting any of the other obligations or liabilities of the Contractor and each of its subcontractors, Contractor agrees that it will have and maintain, and will require its subcontractors to have and maintain, at Contractor's and the subcontractors' own respective expense, in full force and effect minimum insurance for themselves, including their officers, employees, agents, representatives, volunteers and subcontractors (collectively, "Contractor") with companies approved by the State of Texas and satisfactory to County.
- B. As a condition precedent to commencement of any work, within ten (10) calendar days after the Effective Date of this Contract, Contractor shall furnish to the *Dallas County Director of Purchasing* (at the same address given below under this Insurance heading) the following minimum insurance coverage that show the County as the certificate holder and covers the period of the Term of this Contract and any renewals:

- 1) Statutory Workers' Compensation Insurance that meets the requirements of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, or, if self-insured, then Contractor must provide to County evidence of a certificate issued by the Workers' Compensation Commission approving such self-insurance. If Contractor has no employee (as defined by the Texas Workers' Compensation Act), Contractor shall provide County with a sworn Affidavit in lieu of a Certificate of Insurance, which Affidavit shall be attached and incorporated into this Contract by reference for all purposes, and which shall state that there is no employee. In the event that any work is subcontracted, Contractor shall require the subcontractors to similarly provide Workers' Compensation Insurance for all of the subcontractors' employees, unless such employees are afforded protection by the Contractor. Contractor shall bear the burden of all workers' compensation coverage for all of its subcontractors and subcontractors' employees who do not have workers' compensation coverage. Contractor also represents that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with an appropriate insurance carrier, or in the case of self insurance, with the Texas Workers' Compensation Commission. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

| <u>Types of Coverage</u> | <u>Limits of Liability</u> |
|---------------------------|----------------------------|
| Workers' Compensation | Statutory |
| Employer's Liability | |
| Bodily injury by Accident | \$500,000.00 Each Accident |
| Bodily injury by Disease | \$500,000.00 Each Employee |
| Bodily injury by Disease | \$500,000.00 Policy Limit |

- 2) Professional Liability Insurance or Errors and Omissions Insurance. Contractor shall indemnify County for damages resulting from defects, errors or omissions and shall secure, pay for and maintain in full force and effect during the Term of this Contract and any subsequent extensions hereto and thereafter for an additional five (5) years from the effective date of cancellation, termination or expiration of this Contract or any subsequent extensions hereto, sufficient errors and omissions insurance in a minimum amount of One Million dollars and 00/100 Dollars (\$1,000,000.00) covering all individuals performing under this Contract, with certificates of insurance evidencing such coverage to be provided to the County.
- 3) Commercial General Liability Insurance, including Contractual Liability Insurance. Contractor shall maintain Commercial General Liability Insurance coverage, including Contractual Liability Insurance, for the following: (a) Premises operations; (b) Independent contractors or consultants; (c) Products/Completed operations; (d) Personal injury; (e) Contractual liability; (f) Explosion, collapse and underground; (g) Broad form property damage, to include fire legal liability. Such insurance shall carry a limit not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence with a general aggregate of Two Million and 00/100 Dollars (\$2,000,000.00) and products and completed operations aggregate of Two Million and 00/100 Dollars (\$2,000,000.00). There shall not be any policy exclusion or limitations for personal injury, advertising liability, medical payments, fire damage, legal liability, broad form property damage, and/or liability for independent contractors and volunteers, or such additional coverage or increase in limits, including those contained within any bid specifications.

4) Commercial Automobile Liability Insurance. Any liability associated with the use or operation of a vehicle by Contractor, its agents or employees, in connection with the performance of Services under this Contract shall not be the responsibility of the County.

C. Contractor agrees that, with respect to the above referenced insurance, all insurance contracts/policies will contain the following required provisions:

- 1) Additional Insureds. Name County, including its officers, elected officials, employees and authorized agents, as additional insureds (as the interest of each insured may appear) as to all applicable coverage.
- 2) This insurance shall not be canceled, materially changed, or non-renewed until after thirty (30) calendar days prior written notice to the County.
- 3) Provide for an endorsement that the "other insurance" clause shall not apply to the County where the County is an additional insured on the policy.
- 4) Provide for notice to the County to the person and at the address shown below by certified mail, return receipt requested, and full postage paid, sent to:

Dallas County Director of Purchasing
Records Building, 6th Floor
509 Main Street, Room 623
Dallas, Texas 75202-5799

5) Contractor agrees to waive subrogation, and each applicable policy of insurance shall state a waiver of subrogation, against County, including its elected officials, officers, employees, volunteers, agents and representatives, for injuries, including death, property damage and/or any other loss.

D. Contractor shall be solely responsible for all cost of any insurance as required here, any and all deductible or self-insured amount, which in no event shall exceed ten percent (10%) of the amount insured and in the event that an insurance company should deny coverage.

E. It is the intent of these requirements and provisions that Contractor's insurance covers all cost and expense so that the County, including its elected officials, officers, employees, volunteers, agents and representatives will not sustain any expense, cost, liability or financial risk as a result of the performance of Services under this Contract.

F. Insurance certificates. The certificates of insurance shall list the County as the certificate holder. Any and all copies of Certificates of Insurance shall reference this Contract for which the insurance is being supplied. All insurance policies or duly executed certificates for the same required to be carried by Contractor under this Contract, together with satisfactory evidence of the payment of the premium thereof, shall be delivered to the *Dallas County Director of Purchasing* located at the *Dallas County Records Building, 509 Main Street, 6th Floor, Dallas, Texas 75202* within ten (10) calendar days of execution and/or renewal of this Contract and upon renewals and/or material changes of such policies, but not less than fifteen (15) calendar days prior to the

expiration of the term of such coverage, or such non-delivery shall constitute a default of this Contract subject to immediate termination at County's sole discretion.

- G. All insurance coverage shall be on a per occurrence basis or a per claim basis if Contractor provides for five (5) year tail coverage, unless specifically approved in writing and executed by the County's Director of Purchasing and Risk Manager.
- H. All insurance required to be carried by Contractor and/or subcontractors under this Contract must be acceptable to the County in form and content, in its sole discretion. All policies shall be issued by an insurance company acceptable and satisfactory to County and authorized to do business in the State of Texas. Acceptance of or the verification of insurance by County shall not relieve or decrease the liability of the Contractor.
- I. Minimum insurance is a condition precedent to any work performed under this Contract and for the entire Term of this Contract, including any renewals or extensions. In addition to any and all other remedies County may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, or such insurance lapses, is reduced below minimum requirements or is prematurely terminated for any reason, County shall have the right to:
 - 1) Order Contractor to stop work hereunder, which shall not constitute a Suspension of Work;
 - 2) Withhold any payment(s) which become due to Contractor until Contractor demonstrates compliance with the requirements and assurance and proof acceptable to County that there is no liability to County for failure to provide such required insurance;
 - 3) At its sole discretion, declare a material breach of this Contract, which, at County's discretion, may result in:
 - a) termination of this Contract;
 - b) demand on any bond, as applicable;
 - c) the right of the County to complete this Contract by contracting with the "next low proposal." Contractor will be fully liable for the difference between the original Contract price and the actual price paid, which amount is payable to County by Contractor on demand; or
 - d) any combination of the above;
- J. Approval, disapproval or failure to act by the County regarding any insurance supplied by Contractor shall not relieve Contractor of full responsibility or liability for damages and accidents as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the Contractor from liability.
- K. Acceptance of the Services, or failure to act by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, associates, agents or subcontractors for the accuracy and competency of their Services; nor shall such acceptance be deemed an assumption of responsibility or liability by

County for any defect in the Services performed by Contractor, its employees, subcontractors, and agents.

- L. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this Contract.
- M. Survival. The provisions of this Section shall survive termination and/or expiration of this Contract, or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.
- N. Insurance Lapse. Pursuant to Section 94.73 of the Dallas County Code, if the Contractor fails to maintain the insurance required under the Contract continuously at all times during the period stated in the Contract, or otherwise has a lapse in any of the required insurance coverage, including workers' compensation coverage, the Contractor shall reimburse the County for any and all costs, including attorney's fees incurred by the County in curing said default. In the event of any insurance lapse, the County shall retain five percent (5%) of the value of the total Contract Sum for a period of six (6) months from the date of the cure of the insurance lapse or the date the Contract has ended, whichever is later, to cover the County's potential exposure to liability during the period of the insurance lapse.

In the event that the Contractor does not maintain insurance as required by the Contract, the Contractor shall immediately cure such lapse at the Contractor's sole cost and expense, and pay the County in full for all costs and expenses incurred by the County under the Contract as a result of the Contractor's failure to maintain insurance, including, but not limited to, any and all costs and reasonable attorney's fees relating to the County's efforts to cure such lapse in insurance coverage. Such costs and attorney's fees, which shall not exceed One Thousand Five Hundred and 00/100 Dollars (\$1500.00), shall be automatically deducted from monies owed to the Contractor by the County under the Contract. If the monies owed to the Contractor under the Contract are less than the amount required to cure the lapse in coverage, the Contractor shall pay such monies to the County upon written demand. Moreover, upon any lapse of the required insurance by the Contractor, the County shall immediately retain five percent (5%) of the total value of the Contract to cover the County's potential exposure to liability during the period of such insurance lapse. The five percent (5%) retainage shall be immediately deducted from any monies due to the Contractor by the County under the Contract and held by the County for a period of six (6) months from the date of the cure of the insurance lapse or a period of six (6) months from the date the Contract has terminated, expired, or otherwise ended, whichever is later. If no claim is received by or lawsuits filed against the County for any applicable matters, accidents or injuries that occurred during the lapse of insurance, the retainage shall be promptly returned to the Contractor upon written request. Notwithstanding the foregoing, in the event a claim is received by or lawsuit is filed against the County for applicable matters, accidents, or injuries that occurred during the Contractor's insurance lapse, the County shall use the retainage to defend, pay costs of defense, or settle any and all such claims, lawsuits, or judgments, with any and all amounts in excess of the retainage to be paid by the Contractor upon written demand by the County.

11. TERMINATION / SUSPENSION

- A. Suspension. Should County desire to suspend the Services, but not terminate the Contract, County shall issue a written order to stop work. The written order shall set out the terms of the suspension. Contractor shall stop all Services as set forth in this Contract and will cease to incur costs to County during the term of the suspension. Contractor shall resume work when notified to do so by County in a written authorization to proceed. If a change in the terms and conditions of payment for Services of this Contract is necessary because of a suspension, a mutually agreed Contract amendment will be executed in accordance with this Contract.
- B. Termination. County may, at its option and without prejudice to any other remedy to which it may be entitled to at law or in equity, or elsewhere under this Contract, terminate this Contract, in whole or part, by giving thirty (30) calendar days prior written notice thereof to Contractor with the understanding that all Services being performed under this Contract shall cease upon the date specified in such notice. County shall compensate the Contractor in accordance with the terms of this Contract for the Services performed prior to the date specified in such notice. In the event of cancellation, Contractor shall cease any and all Services under this Contract on the date of termination and to the extent specified in the notice of termination. Upon receipt of such notice, Contractor shall not incur any new obligations or perform any additional Services and shall cancel any outstanding obligations or Services to be provided. To the extent funds are available and reimbursement is permitted, County will reimburse Contractor for non-canceled obligations that were incurred prior to the termination date. Upon termination of this Contract as herein above provided, any and all unspent funds that were paid by County to Contractor under this Contract and any and all County data, documents and information in Contractor's possession shall be returned to County within five (5) business days of the date of termination. In no event shall County's termination of this Contract, for any reason, subject County to liability.
- 1) Without Cause: This Contract may be terminated, in whole or in part, without cause, by County upon thirty (30) calendar days prior written notice to Contractor.
 - 2) With Cause: County reserves the right to terminate this Contract immediately, in whole or in part, at its sole discretion, for the following reasons:
 - a) Lack of, or reduction in, funding or resources;
 - b) Non-Performance. Contractor's non-performance of the specifications of this Contract or non-compliance with the terms of this Contract shall be a basis for termination of the Contract by the County. Termination, in whole or in part, by the County under this Section may be made at County's option and without prejudice to any other remedy to which County may be entitled to at law or in equity, or elsewhere under this Contract, by giving thirty (30) days written notice to Contractor with the understanding that all Services being performed under this Contract shall cease upon the date specified in such notice. County shall not pay for work, equipment, Services or supplies that are unsatisfactory or unauthorized. At County's sole discretion and with written notice by County, Contractor may be given a reasonable opportunity prior to termination to correct any deficiency in the work or Services performed under this Contract. County will consider a reasonable time to be thirty (30) calendar days to cure any problems and/or

deficiencies with Contractor's performance, such problems and/or deficiencies being determined by County. Nothing herein, however, shall be construed as negating the basis for termination for non-performance and shall in no way limit or waive County's right to terminate this Contract under any other provisions herein.

- c) Contractor's improper, misuse or inept performance of Services under this Contract;
- d) Contractor's failure to comply with the terms and provisions of this Contract;
- e) Contractor's submission of invoices, data, statements and/or reports that are incorrect, incomplete and/or false in any way;
- f) In County's sole discretion, if termination is necessary to protect the health and safety of clients;
- g) If Contractor becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver or similar officer, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key employees; and/or
- h) Contractor's inability to perform under this Contract due to judicial order, injunction or any other court proceeding.

12. NOTICE

Any notice to be given under this Contract shall be deemed to have been given if reduced to writing and delivered in person or mailed by overnight or Registered Mail, postage pre-paid, to the party who is to receive such notice, demand or request at the addresses set forth below. Such notice, demand or request shall be deemed to have been given three (3) business days subsequent to the date it was so delivered or mailed.

To: County:

Keta Dickerson, Program Manager
Dallas County Divert Court
133 N. Industrial Blvd., 5th Floor A18
Dallas, TX 75207

w/a copy to:

Chong Choe
Assistant District Attorney
411 Elm Street, 5th Floor
Dallas, TX 75202

To Contractor:

A. Rebecca Crowell, Executive Director
Nexus Recovery Center, Inc.
8733 La Prada Drive
Dallas, TX 75228
(214) 321-0156

Lenora Sevillian
Purchasing Contracts Supervisor
Dallas County Purchasing Department
509 Main Street, 6th Floor, Room #623
Dallas, TX 75202

13. SEVERABILITY

If any provision of this Contract is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions in this Contract. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

14. SOVEREIGN IMMUNITY

This Contract is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and state laws. The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver of any immunities from suit or from liability that the County has by operation of law. Nothing in this Contract is intended to benefit any third party beneficiary.

15. COMPLIANCE WITH LAWS AND VENUE

In providing Services required by this Contract, Contractor must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, regulations, grant requirements, licenses, legal certifications, or inspections required for the Services, facilities, equipment, or materials. This Contract shall be governed by Texas law and exclusive venue for any legal action arising from this Contract shall lie in Dallas County, Texas.

16. AMENDMENTS AND CHANGES IN THE LAW

No modification, amendment, novation, renewal or other alteration of this Contract shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition or deletion to the terms of this Contract which are required by changes in federal or state law are automatically incorporated herein without written amendment to this Contract and shall be effective on the date designated by said law.

17. ENTIRE AGREEMENT

This Contract, including all Exhibits and any attachments, constitutes the entire agreement between the parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written.

18. BINDING EFFECT

This Contract and the respective rights and obligations of the parties hereto shall inure to the benefit and be binding upon the successors and assigns of the parties hereto, as well as the parties themselves.

19. GOVERNMENT FUNDED PROJECT

If Contract is funded in part by either the State of Texas or the federal government, the Contractor agrees to timely comply without additional cost or expense to County, unless otherwise specified herein, to any statute, rule, regulation, grant, contract provision or other state or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the Services rendered under the terms of this Contract.

20. DEFAULT/CUMULATIVE RIGHTS/MITIGATION

It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Contract are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Contractor has a duty to mitigate damages.

21. FISCAL FUNDING CLAUSE

Notwithstanding any provisions contained herein, the obligations of the County under this Contract are expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Contract and any extensions thereto. Contractor shall have no right of action against County in the event County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Contract or failure to budget or authorize funding for this Contract during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Contract by written notice to Contractor at the earliest possible time prior to the end of its fiscal year.

22. COUNTERPARTS, NUMBER/GENDER AND HEADINGS

This Contract may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Contract shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Contract.

23. PREVENTION OF FRAUD AND ABUSE

Contractor shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Contract. Any known or suspected incident of fraud or program abuse involving Contractor's employees or agents shall be reported immediately by the County to the Office of the Inspector General for appropriate action. Moreover, Contractor warrants to be not listed on a local, county, state or federal consolidated list of debarred, suspended and ineligible contractors and grantees. Contractor and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds collected pursuant to this Contract does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. Contractor shall, upon notice by County, refund

expenditures of the Contractor that are contrary to this Contract and deemed inappropriate by the County.

24. INDEPENDENT CONTRACTOR

Contractor, including its agents or employees, is an independent contractor and not an agent, servant, joint enterpriser, joint venturer or employee of the County, and is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work covered under this Contract.

25. ASSIGNMENT

Contractor assures that it will not transfer or assign its interest in this Contract without prior written consent of County. Contractor understands that in the event that all or substantially all of Contractor's assets are acquired by another entity, Contractor is still obligated to fulfill the terms and conditions of this Contract. County approval to transfer or assign Contractor's interest in this Contract to an entity that acquires all or substantially all of Contractor's assets is subject to formal approval by the County Commissioners Court. In the event of the assignment or sale of Contractor's assets, the County, at its option, may terminate this Contract and at no cost to the County retain the use of any of the deliverables and other items provided under this Contract.

26. SUBCONTRACTING

Contractor may not enter into agreements with subcontractors for delivery of the designated Services outlined in this Contract without prior written consent of the County, which consent shall not be unreasonably withheld. The costs of all subcontracted services are included in the fees paid herein. Subcontracts, if any, entered into by the Contractor will be in writing and subject to all requirements herein. Contractor agrees that Contractor is solely responsible to County for the performance of this Contract. Contractor shall pay all subcontractors in a timely manner. County shall have the right to prohibit Contractor from using any subcontractor.

27. CONTRA PROFERENTUM

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, the Agreement shall not be construed against the party who drafted the Agreement and such party shall not be responsible for the language used.

28. CONFIDENTIAL INFORMATION AND OWNERSHIP

- A. Ownership of County Data. All County data shall remain the property of County. The County data shall not be otherwise used, disclosed, sold, assigned, leased or provided, or commercially exploited by or on behalf of Contractor and its personnel, including, without limitation, employees, officers, agents, subcontractors, invitees, third party vendors, or assigns (collectively, "Contractor"), to any third party in any respect without County's written consent. Contractor shall not delete or destroy any County data or media on which County data resides without prior written authorization of County (acting through the County Commissioners Court). At no cost to County, Contractor shall upon request promptly return to County, in the format and on the media in use as of the date of the request, any and all requested portion of any County data it may possess or control.

- B. Contractor shall not disclose privileged or confidential communications or information acquired in the course of the performance of the Services under this Contract, unless authorized by law. Contractor agrees to safeguard and adhere to all confidentiality, privacy and security requirements according to this Contract and the applicable federal, state and local rules and regulations for all information deemed confidential.
- C. Confidentiality. "Confidential Information" means information designated as confidential or which would be recognized as confidential by a reasonable person from its nature and the circumstances surrounding its disclosure. Confidential Information includes, without limiting the generality of the foregoing, County software, County data, the terms of this Contract, and information: (1) relating to disclosing Party's business, policies, strategies, operations, finances, plans or opportunities, including the identity of, or particulars about, the County's clients, customers or service providers; (2) marked or otherwise identified as confidential, restricted, secret or proprietary, including, without limiting the generality of the foregoing, information acquired by inspection or oral disclosure provided such information acquired by inspection or oral disclosure was identified as confidential at the time of disclosure or inspection; (3) financial/operating risk patterns and specific audit sample techniques of County; or (4) recognized by statute as confidential, including information relating to individual health, mental health, sexually transmitted diseases, and HIV-AIDS.
- D. Exceptions. Notwithstanding the foregoing, Confidential Information does not include information that the receiving Party can establish: (1) has become generally available to the public or commonly known in either Party's business other than as a result of a breach by the receiving Party of any obligation to the disclosing Party; (2) was known to the receiving Party prior to disclosure to the receiving Party by the disclosing Party by reason other than having been previously disclosed in confidence to the receiving Party; (3) was disclosed to the receiving Party on a non-confidential basis by a third party who did not owe an obligation of confidence to the disclosing Party with respect to the disclosed information; (4) was independently developed by the receiving Party without any recourse to any part of the Confidential Information; or (5) in the case of County, any information related to the Services which County has publicly disclosed in connection with this Contract, including, without limitation, information of an operational, technical or financial nature related to County.
- E. Use of Confidential Information. During the term of this Contract, the receiving Party may: (1) disclose Confidential Information received from the disclosing Party only to its employees, agents, officers, directors, attorneys, and subcontractors who have a need to know such information exclusively for the purpose of performing pursuant to this Contract and who have executed a nondisclosure agreement containing provisions no less restrictive than those contained herein, or who are subject to other equivalent means to ensure confidentiality; (2) reproduce the Confidential Information received from the disclosing Party only as required to perform pursuant to this Contract; and (3) disclose Confidential Information as required by law, provided the receiving Party gives the disclosing Party prompt notice prior to such disclosure to allow the disclosing Party to make a reasonable effort to obtain a protective order or otherwise protect the confidentiality of such information. Except as otherwise specifically provided in this Contract, the receiving Party shall not during the term and after expiration or earlier termination of this Contract: (1) disclose, in whole or in part, any Confidential Information received directly or indirectly from the disclosing Party; or (2) sell, rent, lease, transfer, encumber, pledge, reproduce, publish, market, transmit, translate, modify, reverse

engineer, compile, disassemble or otherwise use the Confidential Information in whole or in part.

- F. Care. The receiving Party shall exercise the same care in preventing unauthorized disclosure or use of the Confidential Information that it takes to protect its own information of a similar nature, but in no event less than reasonable care.
- G. Return of Confidential Information. Immediately upon the disclosing Party's request, and at the expiration or earlier termination of this Contract or any other applicable renewal or extension hereto, the receiving Party shall return or destroy all materials containing Confidential Information, including without limitation, all originals, copies, reproductions and summaries, and all copies of Confidential Information present on magnetic media, optical disk, volatile memory or other storage device, in a manner that assures the Confidential Information is rendered unrecoverable.
- H. Notwithstanding the foregoing, County agrees, to the extent permitted by the Public Information Act, to keep confidential (and store in a secure area with limited access) and will not copy, publish, sell, exchange, disclose, or provide to others or use any information, documents or data, provided to or disclosed to County, or any information related to this Contract, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, for any purposes other than performing County's obligations under this Contract, unless prior written notification is given by County that such specified item will be released under the Public Information Act.
- I. Confidential or Proprietary Marking. Any information or documents the Contractor uses in the performance of the Services provided under this Contract that Contractor considers confidential or proprietary or that contains trade secrets must be clearly marked accordingly. This marking must be explicit as to the designated information. The designation, however, may not necessarily guarantee the non-release of the documents or information under the Texas Public Information Act or otherwise required by law.
- J. County Software. County shall identify the County software, if any, that Contractor is authorized to use to perform the Services pursuant to this Contract and specify the rights of Contractor to use the County software for the benefit of the County.
- K. Contractor Software. Contractor shall identify any Contractor software that will be used to provide the Services under this Contract. Without the fully informed written consent of the County (acting through the County Commissioners Court, County Commissioners Court Administrator, or County Contract Manager), Contractor shall not use in performing the Services pursuant to this Contract any Contractor software that is not commercially available to County.
- L. Use of Concepts. Nothing in this Contract shall restrict a party from the use of any ideas, concepts, know-how, methods or techniques that such party, individually or jointly, develops or discloses under this Contract or obtains from third parties, except to the extent that such use infringes the other party's patent rights, copyrights or other intellectual property rights or involves a disclosure or use of the other party's Confidential Information.

- M. Security. To the extent Contractor has access to County facilities and systems, Contractor will comply with the security procedures that are in effect during the Term of this Contract for the security of County's facilities and County data. In the event that Contractor personnel may have the ability to defeat systems security provisions on devices containing related and unrelated confidential information or data, Contractor covenants that it shall not access such County data or information or assert waiver of these confidentiality requirements by virtue of Contractor's access.
- N. Survival. The provisions of this Section shall survive cancellation, termination and/or expiration of this Contract, or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.

29. ASSURANCES

- A. Contractor agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
- B. Contractor assures that neither it nor its employees, volunteers, agents or officers shall receive personal benefits, commission, consideration, or gains in performance of the Services outlined in this Contract. Furthermore, Contractor agrees to disclose prior to commencement of a particular assignment any material/financial interests that it or a third party may have in the Services required under this Contract.
- C. No-Discrimination. This Contract is subject to applicable federal and state laws and executive orders, including the Fair Labor Standards Act of 1938, relating to equal opportunity and nondiscrimination in employment. Neither Contractor nor its agents or subcontractors shall discriminate in their employment practices against any person by reason of disability, age, race, creed, national origin, color, religion, sex, political affiliation, or veteran status. In addition Contractor assures that no person will, on the grounds of disability, age, race, creed, national origin, color, religion, sex, political affiliation, or veteran status, be excluded from, be denied the benefit of or be subjected to discrimination under any program or activity funded in whole or in part under this Contract. Contractor agrees to comply, and to cause its agents and subcontractors to comply, with the provisions of said laws and orders to the extent any such laws and orders are applicable in the performance of this Contract.
- D. Contractor assures that funds received pursuant to this Contract will not be used for lobbying the Texas legislature or any governmental agency in connection with a particular contract.
- E. Contractor shall pay all subcontractors in a timely manner. County shall have no liability to any subcontractors in the event Contractor does not pay or delays payment to any subcontractors. At termination or expiration of this Contract, Contractor shall deliver to County an affidavit of all bills paid. Final payment shall be contingent upon receipt of such affidavits as resolution of all accounting for which County is or may be liable under this Contract.
- F. Under Section 231.006, Texas Family Code, Contractor certifies to County that the owner(s) of at least a 25% interest in the organization is not delinquent in any child support obligation that renders him/her ineligible to receive payment under the terms of

this Contract. Contractor hereby acknowledges that this Contract may be terminated and payment may be withheld if this Certification is inaccurate.

- G. Contractor certifies that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency.
- H. Contractor assures that it shall not receive personal benefits or gains in performance of the Services outlined in this Contract. Furthermore, Contractor agrees to disclose prior to commencement of a particular assignment any material/financial interests that it or a third party may have in the Services required under this Contract.
- I. Best Efforts to Minimize Costs to County. Contractor shall use its best efforts to complete each assigned task in as economical a manner as possible and to minimize any charges incurred in connection therewith to the maximum extent possible, consistent with Contractor's other obligations under this Contract.
- J. Failure to comply with any of these assurances or any other requirements specified within this Contract will put Contractor in default and/or breach of this Contract and may result, at the sole discretion of County, in the disallowance of funds and the withholding of future awards, in addition to any other remedies permitted by law.
- K. Governmental Consent. Contractor warrants that no consent, approval, or withholding of objection is required from any governmental authority with respect to the entering into or the performance of this Contract.
- L. Corporate Good Standing. Contractor represents and warrants that it: (1) is a non-profit corporation duly incorporated, validly existing and in good standing; (2) has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder; (3) is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it except when the failure to be so licensed, authorized or qualified would not have a material adverse effect on Contractor's ability to fulfill its obligations hereunder.

30. CONTRACTOR'S WARRANTIES

- A. No Actions, Suits, or Proceedings. Contractor warrants that there are no actions, suits, or proceedings, pending or threatened, that will have a material adverse effect on Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will notify County immediately if Contractor becomes aware of any action, suit, or proceeding, pending or threatened, which will have a material adverse effect on Contractor's ability to fulfill the obligations under this Contract.
- B. Warranty of Contractor's Capability. Contractor warrants that it is financially capable of fulfilling all requirements of this Contract and that Contractor is a validly organized entity that has the authority to enter into this Contract. Contractor warrants that it is not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into this Contract.

- C. Professional Quality. Contractor warrants to County that all materials and Services will be of professional quality conforming to generally accepted practices, and that all Services provided under this Contract will be performed in a manner consistent with that degree of care, qualification and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. If there are no applicable or recognized professional standards in the applicable area or areas of expertise required to perform such Services, then Contractor will perform all Services in a good and professional manner that meets County's goals and objectives as stated herein as well as otherwise adds value to and/or improves the performance of County's expectations, objectives and purposes as stated in this Contract. Any work that is determined by County to be less than professional quality will be corrected without charge. This warranty extends for ninety (90) business days past termination or expiration of this Contract. This warranty is limited to rework of the unsatisfactory product without change to the original specifications and without regard to the amount of the effort expended on the original work product.

31. TRANSITION SERVICES REQUIRED OF CONTRACTOR

Upon notice of termination and/or expiration of this Contract, the County shall immediately have the right to audit any and all records of Contractor relating to this Contract. Moreover, upon termination and/or expiration date of this Contract, Contractor agrees to transition the Services provided herein in a cooperative manner and provide anything requested from the County at no additional cost, including, but not limited to the following, upon date of termination and/or expiration: (i) all Contract and Services documentation identified in a complete, neat and orderly manner; and (ii) good faith pledge to cooperate with County upon transition of Services to another contractor or County department providing the same or similar Services; and (iii) final accounting of all income from the Contract; and (iv) downloading and removal of all County information from the Contractor's equipment and software; and (v) removal of Contractor's Services without affecting the integrity of County's systems; and (vi) all records and County property. This provision shall survive Contract termination.

32. TAX

Dallas County, as a county of the State of Texas, is exempt from the payment of Texas state and local sales, excise, and use taxes pursuant to Tex. Tax Code § 151.309, and shall therefore not be liable or responsible to the Contractor for the payment of such taxes under this Contract.

The fees paid to Contractor pursuant to this Contract are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable effective date of this Contract and based upon or measured by Contractor's cost in acquiring or providing products and/or Services and related materials and supplies furnished or used by Contractor in performing its obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by Contractor.

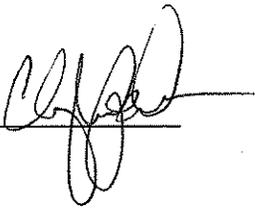
Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by Contractor for work performed under the terms of this Contract and agrees to indemnify and save harmless the County from any such contribution or taxes or liability.

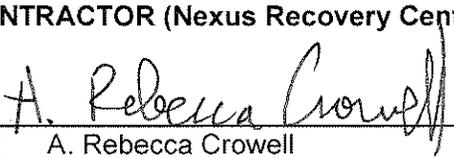
33. SIGNATORY WARRANTY

The undersigned signatories for the parties hereby represent and warrant that they are officers of their respective organizations for which they have executed this Contract and that they have full and complete authorities to enter into this Contract on behalf of their respective organizations and that the executions thereof are the acts of the parties involved and have been delivered and constitute legal, valid and binding obligations of the respective parties.

COUNTY (Dallas County):

CONTRACTOR (Nexus Recovery Center, Inc.):

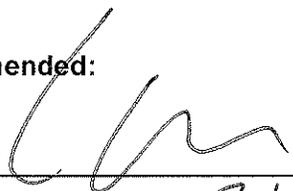
X BY: 
Clay Lewis Jenkins
Dallas County Judge

BY: 
A. Rebecca Crowell
Executive Director

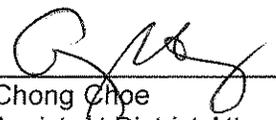
DATE: May 5, 2015

DATE: 4/10/15

Recommended:


BY: Robert Buring

***Approved as to Form:**


BY: Chong Choe
Assistant District Attorney

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

COUNTY OF DALLAS §

STATE OF TEXAS §

CONTRACT
between
DALLAS COUNTY, TEXAS ("County")
and
HOMEWARD BOUND, INC. ("Contractor")
for

SUBSTANCE ABUSE TREATMENT SERVICES TO COUNTY PROBLEM SOLVING COURTS

1. PURPOSE

This Contract is entered into by and between Contractor, a 501(c)(3) nonprofit corporation, and County, a governmental entity, in accordance with the Commissioners Court Order, County's Request for Proposal No. 2015-012-6466 ("RFP 2015-012-6466"), Contractor's RFP response relating to its Substance Abuse Treatment Services dated February 16, 2015 ("Contractor's Proposal"), and pursuant to the authority granted by the applicable statutes, including those under the Texas Government Code, Texas Health and Safety Code Chapter 469, and Texas Code of Criminal Procedure, for substance abuse treatment services relating to the drug court program ("Program") for the Dallas County courts, including the Dallas County Divert Court and the Dallas County Mental Illness Diversion Court (collectively, the "County Problem Solving Courts").

2. TERM

Unless otherwise stated in this Contract, the Term of this Contract will be from April 30, 2015 through April 29, 2016. This Contract may be extended annually for three additional years upon mutual written agreement of the parties hereto.

3. INCORPORATED DOCUMENTS

All related documents are incorporated herein by reference for all purposes including, without limitation, the following:

- 1) RFP 2015-012-6466; and
- 2) Contractor's Response to RFP 2015-012-6466 ("Contractor's Response").

4. ORDER OF PRECEDENCE OF RELATED DOCUMENTS

In the event of a conflict between this Contract, RFP 2015-012-6466, and Contractor's Response, the following order of precedence shall apply:

- 1) this Contract;
- 2) Contractor's Response; then
- 3) RFP 2015-012-6466.

5. SCOPE OF SERVICES

A. Contractor shall perform and complete the Services as stated in this Contract, in RFP 2015-012-6466 and in Contractor's Response, all of which are incorporated herein by reference for all purposes.

B. Project Managers. Contractor and County at the start of this Contract shall assign specific or a chain of Project Managers ("Managers") who can address all administrative, technical, and contractual issues effectively and efficiently. The Managers will be responsible for the management and implementation of this Contract and to serve as the primary contact for each party throughout the Term of this Contract. Each party represents that its Manager is and will be fully qualified and authorized to perform the tasks assigned to Manager; provided, however, that any significant deviation from the intent of this Contract, any increase in cost to the County, or any extension to the deliverable due dates will not be effectively unless signed by the authorized Signatories for both parties via a formal Amendment to the Contract.

1) Removal of Manager. Upon at least fourteen (14) calendar days advance written notice, and with the written consent of the other party, which consent shall not be unreasonably withheld or delayed, either party may replace its Project Manager.

2) County Project Manager ("County Manager"). The County Manager, or the County Manager's designated representative ("County Representative"), will be responsible for coordinating all aspects of service relating to this Contract. Contractor will work under the direction of the County Manager or County Representative throughout the Term of the Contract.

The County Manager or County Representative shall decide all questions that may arise as to the quality and acceptability of any Services performed under this Contract. If, in the opinion of the County Manager or County Representative, the performance was unsatisfactory, the County shall notify the Contractor of such and the Contractor shall immediately make such performance acceptable to the reasonable satisfaction of County at no additional cost to County.

3) Contractor's Project Manager ("Contractor Manager"). Contractor shall assign or designate, without additional costs to County, a Contract Manager, for and during any and all performance of Services by Contractor, who shall be fully qualified and authorized to perform the tasks assigned to him/her and who shall, without limitation:

a) Be reasonably accessible;

b) Assume group coordination, management, monitoring, administrative, and leadership responsibilities for Contractor personnel that perform the Services;

c) Have the ability to respond efficiently and effectively to County's immediate concerns during the performance of these Services, including the ability to lead and direct Contractor personnel while they are performing the Services.

C. Personnel.

1) Personnel Qualifications. Contractor warrants that all personnel it uses under this

Contract (the "Contractor Personnel") shall be: employees of Contractor or, if applicable, Contractor's subcontractor(s), fully qualified and licensed to perform the tasks assigned them, and in compliance with all applicable immigration laws. Contractor shall identify to County all third party contractors and subcontractors, and their roles and responsibilities, upon request. Contractor shall be solely responsible for payment of all wages, benefits, worker's compensation, disability benefits, unemployment insurance, as well as for withholding any required taxes for all Contractor Personnel in accordance with applicable federal, state, and local law. Contractor agrees to promptly (within two (2) business days), provide County with information regarding individual Contractor Personnel or proposed Contractor Personnel as County may reasonably request.

- a) Compensated Substance Abuse counselors who render clinical services must have a license from the Texas Department of State Health Services ("DSHS") in compliance with the Counselor and Qualified Professional licensure rules;
 - b) Must maintain Facility Licensure Standards by DSHS for Intensive Residential, Residential, Detoxification, Outpatient and/or Intensive status.
- 2) Personnel Cooperation. Each party recognizes the importance of cooperation among their respective employees, and each party will use commercially reasonable efforts to ensure positive working relationships between the parties so as to ensure timely completion of their respective tasks.
- 3) Replacement or Removal of Contractor Personnel.
- a) *County Initiated Request of Removal of Contractor Personnel.* County may, upon a written notice to the Contractor Manager or the person signing this Contract, require Contractor to remove an individual immediately from providing Services for the following reasons: violation of the terms and conditions of this Contract; violation of County's work rules and regulations; criminal activity; violation of state, federal, or municipal statutes; and engagement by said individual in activities that could be detrimental to County or County personnel, as determined by County in its sole discretion. Contractor shall replace the removed individual with other Contractor Personnel as appropriate.
 - b) *Replacement of Contractor Personnel.* Contractor shall have the right to make reasonable and necessary changes to the list of Contractor Personnel in order to accomplish the purposes of this Contract with prior written notice to the County Manager. Any changes in the Contractor Personnel shall be made utilizing persons of similar background, experience and credentials and shall be for the benefit of County. Contractor shall not be required to obtain County's prior approval of temporary changes due to vacation or illness of Contractor Personnel, but must provide immediate written notice to the County Manager. If the temporary change in Contractor Personnel is for a period to exceed fifteen (15) business days, Contractor shall be obligated to seek the County's approval, which will not be unreasonably withheld or delayed.
- D. Provide detoxification, intensive residential and supportive residential substance abuse treatment services to substance abusing offenders (hereinafter called the "Participants") that the staff of the Problem Solving Courts have determined to be unable to pay in part

and/or in total, for these services;

- E. Provide all necessary personnel, equipment, materials, supplies, facilities to carry out the services;
- F. Coordinate with County to identify needs of the Participants that are beyond the scope of Contractor's substance abuse treatment services and make appropriate referrals in such circumstances;
- G. Develop and implement procedures for services to Participants with concurring disorders and/or mental and physical disabilities;
- H. Establish and maintain County Court-approved written policies and procedures relating to services for Participants, including those relating to, without limitation, admission, discharge, discharge planning, treatment, transportation, safety and security, clinical supervision, referral activities, house management, documentation of services, incident reporting and resolution. These policies and procedures shall have the express approval by the County courts prior to implementation;
- I. Provide administrative services to ensure a smooth and maximum participation by Participants, including:
 - 1) Cooperate and coordinate with County staff at all levels;
 - 2) Provide orientation to Participants regarding services and support resources;
 - 3) Contact the County Manager by both phone and email within twenty-four (24) hours of failure of any Participant to comply with the Program, including, without limitation, his/her treatment plan, participation schedule, failure to show for initial appointment, and/or unauthorized departures;
 - 4) Document at least on a weekly basis the Participant's progress, level of participation and compliance with treatment goals and objectives and provide, in writing, weekly progress reports to the appropriate Problem Solving Court staff on each Participant at no additional cost to County;
 - 5) Transport residential Participants to Problem Solving Court at least once a month to meet face to face with the Judge for assessment of progress in the treatment program;
 - 6) Pick up Participants from the Dallas County jail when appropriate;
 - 7) Ensure the safety and security of Participants, while providing substance abuse treatment services;
 - 8) Refer Participant back to the County for further action if Contractor determines that Participant needs additional or different treatment services. The process by which this action will occur will be addressed in the Problem Solving Court's Policies and Procedures;
 - 9) Submit discharge summary reports to the applicable Problem Solving Court Case

Staff immediately upon discharge of Participants from Contractor's program;

10) Comply with County policies and procedures as set forth by the Program;

J. Provide testimonies in courts at the request of County for no additional cost to County;

6. PAYMENT FOR SERVICES

A. Contractor agrees to submit to the applicable Problem Solving Court complete, fully documented and accurate itemized statements of invoices with appropriate/applicable attachments, statistical and programmatic documentation reports, as required by County for the performed Services no later than the fifteenth (15th) of the calendar month following the prior month's Services.

B. Each statement shall be in a form acceptable to the Dallas County Auditor, and shall include details of the Services rendered as may be requested by the Auditor for verification purposes. The statement shall, at a minimum, include a description of the Services, the day(s) and the amount of time during the day(s) that Contractor performed the Services, and the total amount billed for Services rendered.

C. After receipt of the statement, the applicable Problem Solving Court shall review the statement and approve it with any modifications deemed appropriate and thereafter forward the statement with any modifications to the County Auditor for payment. **Contractor shall hold harmless and indemnify the County for any discrepancy between the amount submitted for payment and the actual payment finally approved by the County.**

D. Upon receipt of statement, County agrees to compensate Contractor within thirty (30) business days at the following rates:

| Type of Service | Unit | Divert Rate |
|---|------|-------------|
| Residential (Half-Way House) | Day | \$ 41.00 |
| Intensive Residential | Day | \$ 85.00 |
| Detoxification | Day | \$180.00 |
| Supportive Outpatient Counseling – Individual | Hour | \$ 58.00 |
| Supportive Outpatient Counseling – Group | Hour | \$ 18.00 |
| Intensive Outpatient Counseling – Individual | Hour | \$ 58.00 |
| Intensive Outpatient Counseling – Group | Hour | \$ 18.00 |

County will make payment to Contractor upon receipt of a verified and proper billing for Services actually rendered. Any payments by County to Contractor may be withheld if the Contractor fails to comply with County's contract provisions, deliverables, or other requirements relating to Contractor's performance of work and services under this Contract. County shall pay Contractor only for those costs that are allowable under applicable laws, including, without limitation, the federal rules, regulations, cost principles, and those stated in this Contract. County shall have the right to withhold all or part of any payments to the Contractor to offset any payment or reimbursement made to Contractor for ineligible expenditures and/or undocumented units of service billed.

E. Not to Exceed Amount. The maximum amount to be paid under this Contract is one

hundred seventy-five thousand and 00/100 Dollars (\$175,000.00). This Contract's estimated amount is subject to being either decreased or increased at the County's sole discretion. Program funding may vary from year to year based on the availability of funds.

- F. Contractor agrees that a temporary delay in making payments due to the County's accounting and disbursement procedures shall not place the County in default of this Contract and shall not render the County liable for interest or penalties, provided such delay shall not exceed thirty (30) calendar days after its due date. Any payment not made within thirty (30) calendar days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.
- G. Prior Debts. County shall not be liable for costs incurred or performances rendered by Contractor before or after the Contract Term; for expenses not billed to County within the applicable time frames set forth in this Contract; or for any payment for Services or activities not provided pursuant to the terms of this Contract.
- H. Administrative Controls. Contractor shall establish, document and maintain adequate administrative and internal controls to ensure that only allowable and valid costs are billed to County for Services intended under this Contract. Contractor must refund any expenditures or payments that are not within the scope or intent of this Contract.

7. EXPENSES

Unless prior written approval by County is obtained, Contractor shall be responsible for all mileage, parking fees, and/or other expenses related to the fulfillment of the requirements of the Contract. Upon County's prior written approval for travel, living, and out of pocket expenses, County shall reimburse Contractor for mileage and other expenses related to the fulfillment of the requirements of the Contract to the extent that such expenses are reasonably consistent with County policies for such reimbursements and expenses.

8. REPORTING AND ACCOUNTABILITY

- A. Contractor agrees to submit all required documentation and reports on a timely basis and in accordance with the specified time frames.
- B. Contractor agrees that all information, data and supporting documentation that relates to the Services under this Contract shall remain the property of the County.
- C. Should County determine it reasonably necessary, Contractor shall make all of its records and books reasonably related to this Contract available without delay to authorized County personnel to fulfill inspection or auditing deadlines and purposes or to substantiate the provisions of Services under this Contract. Required documents may include, but are not limited to, documents pertaining to Services provided for purposes of programming, creation and modification of data fields, and records of telephone hours of support provided.
- D. Contractor agrees to make available, at reasonable times and for reasonable periods, those supporting documents pertaining to Services. All documents shall be maintained and kept by Contractor for a minimum of four (4) years and ninety (90) calendar days after the termination of the Contract period. If any litigation, claim or audit involving

these records begins before the specified period expires, Contractor must keep the records and documents until the later occurrence of either the end of an additional four (4) years and ninety (90) calendar days from the date of court filings/audit findings, or until all litigation, claims or audit findings are resolved.

E. Disclosure by Contractor to County. Contractor is required to disclose to County without delay the following:

- 1) Any receipt of funds by Contractor other than, or in addition to, the funds paid by County for the Services to Participants under this Contract. Both parties agree that Contractor shall reimburse County for the portion of such funds attributed to the provision of Services under this Contract;
- 2) Any reduction of compensation rate for Services to other clients. Both parties agree that Contractor shall charge County the same reduced rates for those Services to Participants; and
- 3) Report any actions or citations by any other governmental, accrediting or licensing agencies that may affect Contractor's, including its employees', officers', and agents' licensure status or ability to provide the Services hereunder.

9. INDEMNIFICATION

To the fullest extent authorized by law, Contractor, including its assigns, subcontractors, officers, directors, employees (collectively, "Contractor") shall forever waive, release, indemnify and hold harmless County, its Commissioners, Judge, assigns, officers, directors, employees (collectively, "County") from and against any and all losses, damages, injuries (including death), causes of action, claims, demands, liabilities, judgments, suits, losses, damages, fines, assessments, penalties, adverse awards and expenses (whether based upon tort, breach of contract, patent, trademark or copyright infringement, or other intellectual property infringement, failure to pay employee taxes or withholdings, failure to obtain worker's compensation insurance, or otherwise), whether known or unknown, including, without limitation, legal and related legal fees and expenses, of any kind or nature arising out of or on account of, or resulting from (1) any actual or alleged intentional or negligent act or omission of, or default in the performance of, attempted performance of, or failure to perform, its obligations pursuant to this Contract by Contractor, (2) Contractor's involvement in the specified services under this Contract, (3) any terms, conditions, or underlying provisions of this Contract, including but not limited to, any premises or special defect known or unknown to County, and any injury to individuals present during Contractor's involvement or provision of Services under the terms and conditions of this Contract, including willful acts such as assault, copyright, licensing and patent infringement relating to any software and/or equipment provided by Contractor; and wrongful imprisonment or other intentional torts as a result of incorrect and/or scrambled information downloaded from any software and/or equipment provided by Contractor, and (4) the selection, provision, misuse, use or failure to use, by Contractor or any person or entity, of any medical devices, tools, supplies, materials, equipment, or any other devices, tools, supplies, materials, equipment, or vehicles (whether owned or supplied by County, or any other person or entity) in connection said work or operations;

AND FURTHER, Contractor, to the fullest extent allowed by law, agrees to waive, release,

indemnify and hold harmless County against any and all losses, damages, injuries (including death), causes of action, claims, demands, liabilities, judgments, suits, fines, assessments, penalties, adverse awards and/or other expenses, of any kind or nature whatsoever (whether based upon tort, breach of contract, patent, trademark or copyright infringement, or other intellectual property infringement, failure to pay employee taxes or withholdings, failure to obtain worker's compensation insurance, or otherwise), including, without limitation, legal and related legal fees and expenses, of any kind or nature that are incurred by or sought to be imposed on County arising out of or on account of, or resulting from injury (including death), whether known or unknown, including, but not limited to, exposure to any disease, by any manner or method whatsoever, or damage to property (whether real, personal or inchoate), arising out of or in any way related (whether directly or indirectly, causally or otherwise) to the Contract and/or the performance of, attempted performance of, or failure to perform, operation or work by County, its contractors, or its subcontractors, and/or any other person or entity. This indemnification shall apply, whether or not any such injury or damage has been brought on any theory of liability, intentional wrongdoing, strict product liability, County's negligence, or breach of non-delegable duty. Contractor further agrees to defend (at the election of County) at its sole cost and expense against any claim, demand, action or suit for which indemnification is provided herein.

Approval and acceptance of Contractor's Services by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor for the accuracy and competency of their Services; nor shall such approval and acceptance be deemed to be an assumption of such responsibility by the County for any defect, error or omission in the Services performed by Contractor in this regard. Contractor shall defend, hold harmless and indemnify the County for damages resulting from such defects, errors or omissions.

No Indemnification by County. Contractor acknowledges and agrees that Dallas County does not have the ability under Article XI, Section 7 of the Texas Constitution to indemnify Contractor or any other third party for damages arising under this Contract.

Survival. The provisions of this Section 9 shall survive termination, expiration and/or cancellation of this Contract, or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.

10. INSURANCE

- A. Without limiting any of the other obligations or liabilities of the Contractor and each of its subcontractors, Contractor agrees that it will have and maintain, and will require its subcontractors to have and maintain, at Contractor's and the subcontractors' own respective expense, in full force and effect minimum insurance for themselves, including their officers, employees, agents, representatives, volunteers and subcontractors (collectively, "Contractor") with companies approved by the State of Texas and satisfactory to County.
- B. As a condition precedent to commencement of any work, within ten (10) calendar days after the Effective Date of this Contract, Contractor shall furnish to the *Dallas County Director of Purchasing* (at the same address given below under this Insurance heading) the following minimum insurance coverage that show the County as the certificate holder and covers the period of the Term of this Contract and any renewals:

- 1) Statutory Workers' Compensation Insurance that meets the requirements of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, or, if self-insured, then Contractor must provide to County evidence of a certificate issued by the Workers' Compensation Commission approving such self-insurance. If Contractor has no employee (as defined by the Texas Workers' Compensation Act), Contractor shall provide County with a sworn Affidavit in lieu of a Certificate of Insurance, which Affidavit shall be attached and incorporated into this Contract by reference for all purposes, and which shall state that there is no employee. In the event that any work is subcontracted, Contractor shall require the subcontractors to similarly provide Workers' Compensation Insurance for all of the subcontractors' employees, unless such employees are afforded protection by the Contractor. Contractor shall bear the burden of all workers' compensation coverage for all of its subcontractors and subcontractors' employees who do not have workers' compensation coverage. Contractor also represents that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with an appropriate insurance carrier, or in the case of self insurance, with the Texas Workers' Compensation Commission. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

| <u>Types of Coverage</u> | <u>Limits of Liability</u> |
|---------------------------|----------------------------|
| Workers' Compensation | Statutory |
| Employer's Liability | |
| Bodily injury by Accident | \$500,000.00 Each Accident |
| Bodily injury by Disease | \$500,000.00 Each Employee |
| Bodily injury by Disease | \$500,000.00 Policy Limit |

- 2) Professional Liability Insurance or Errors and Omissions Insurance. Contractor shall indemnify County for damages resulting from defects, errors or omissions and shall secure, pay for and maintain in full force and effect during the Term of this Contract and any subsequent extensions hereto and thereafter for an additional five (5) years from the effective date of cancellation, termination or expiration of this Contract or any subsequent extensions hereto, sufficient errors and omissions insurance in a minimum amount of One Million dollars and 00/100 Dollars (\$1,000,000.00) covering all individuals performing under this Contract, with certificates of insurance evidencing such coverage to be provided to the County.
- 3) Commercial General Liability Insurance, including Contractual Liability Insurance. Contractor shall maintain Commercial General Liability Insurance coverage, including Contractual Liability Insurance, for the following: (a) Premises operations; (b) Independent contractors or consultants; (c) Products/Completed operations; (d) Personal injury; (e) Contractual liability; (f) Explosion, collapse and underground; (g) Broad form property damage, to include fire legal liability. Such insurance shall carry a limit not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence with a general aggregate of Two Million and 00/100 Dollars (\$2,000,000.00) and products and completed operations aggregate of Two Million and 00/100 Dollars (\$2,000,000.00). There shall not be any policy exclusion or limitations for personal injury, advertising liability, medical payments, fire damage, legal liability, broad form property damage, and/or liability for independent contractors and volunteers, or such additional coverage or increase in limits, including those contained within any bid specifications.

4) Commercial Automobile Liability Insurance. Any liability associated with the use or operation of a vehicle by Contractor, its agents or employees, in connection with the performance of Services under this Contract shall not be the responsibility of the County.

C. Contractor agrees that, with respect to the above referenced insurance, all insurance contracts/policies will contain the following required provisions:

- 1) Additional Insureds. Name County, including its officers, elected officials, employees and authorized agents, as additional insureds (as the interest of each insured may appear) as to all applicable coverage.
- 2) This insurance shall not be canceled, materially changed, or non-renewed until after thirty (30) calendar day's prior written notice to the County.
- 3) Provide for an endorsement that the "other insurance" clause shall not apply to the County where the County is an additional insured on the policy.
- 4) Provide for notice to the County to the person and at the address shown below by certified mail, return receipt requested, and full postage paid, sent to:

Dallas County Director of Purchasing
Records Building, 6th Floor
509 Main Street, Room 623
Dallas, Texas 75202-5799

5) Contractor agrees to waive subrogation, and each applicable policy of insurance shall state a waiver of subrogation, against County, including its elected officials, officers, employees, volunteers, agents and representatives, for injuries, including death, property damage and/or any other loss.

D. Contractor shall be solely responsible for all cost of any insurance as required here, any and all deductible or self-insured amount, which in no event shall exceed ten percent (10%) of the amount insured and in the event that an insurance company should deny coverage.

E. It is the intent of these requirements and provisions that Contractor's insurance covers all cost and expense so that the County, including its elected officials, officers, employees, volunteers, agents and representatives will not sustain any expense, cost, liability or financial risk as a result of the performance of Services under this Contract.

F. Insurance certificates. The certificates of insurance shall list the County as the certificate holder. Any and all copies of Certificates of Insurance shall reference this Contract for which the insurance is being supplied. All insurance policies or duly executed certificates for the same required to be carried by Contractor under this Contract, together with satisfactory evidence of the payment of the premium thereof, shall be delivered to the *Dallas County Director of Purchasing* located at the *Dallas County Records Building, 509 Main Street, 6th Floor, Dallas, Texas 75202* within ten (10) calendar days of execution and/or renewal of this Contract and upon renewals and/or material changes of such policies, but not less than fifteen (15) calendar days prior to the

expiration of the term of such coverage, or such non-delivery shall constitute a default of this Contract subject to immediate termination at County's sole discretion.

- G. All insurance coverage shall be on a per occurrence basis or a per claim basis if Contractor provides for five (5) year tail coverage, unless specifically approved in writing and executed by the County's Director of Purchasing and Risk Manager.
- H. All insurance required to be carried by Contractor and/or subcontractors under this Contract must be acceptable to the County in form and content, in its sole discretion. All policies shall be issued by an insurance company acceptable and satisfactory to County and authorized to do business in the State of Texas. Acceptance of or the verification of insurance by County shall not relieve or decrease the liability of the Contractor.
- I. Minimum insurance is a condition precedent to any work performed under this Contract and for the entire Term of this Contract, including any renewals or extensions. In addition to any and all other remedies County may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, or such insurance lapses, is reduced below minimum requirements or is prematurely terminated for any reason, County shall have the right to:
- 1) Order Contractor to stop work hereunder, which shall not constitute a Suspension of Work;
 - 2) Withhold any payment(s) which become due to Contractor until Contractor demonstrates compliance with the requirements and assurance and proof acceptable to County that there is no liability to County for failure to provide such required insurance;
 - 3) At its sole discretion, declare a material breach of this Contract, which, at County's discretion, may result in:
 - a) termination of this Contract;
 - b) demand on any bond, as applicable;
 - c) the right of the County to complete this Contract by contracting with the "next low proposal." Contractor will be fully liable for the difference between the original Contract price and the actual price paid, which amount is payable to County by Contractor on demand; or
 - d) any combination of the above;
- J. Approval, disapproval or failure to act by the County regarding any insurance supplied by Contractor shall not relieve Contractor of full responsibility or liability for damages and accidents as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the Contractor from liability.
- K. Acceptance of the Services, or failure to act by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, associates, agents or subcontractors for the accuracy and competency of their Services; nor shall such acceptance be deemed an assumption of responsibility or liability by

County for any defect in the Services performed by Contractor, its employees, subcontractors, and agents.

- L. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this Contract.
- M. Survival. The provisions of this Section shall survive termination and/or expiration of this Contract, or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.
- N. Insurance Lapse. Pursuant to Section 94.73 of the Dallas County Code, if the Contractor fails to maintain the insurance required under the Contract continuously at all times during the period stated in the Contract, or otherwise has a lapse in any of the required insurance coverage, including workers' compensation coverage, the Contractor shall reimburse the County for any and all costs, including attorney's fees incurred by the County in curing said default. In the event of any insurance lapse, the County shall retain five percent (5%) of the value of the total Contract Sum for a period of six (6) months from the date of the cure of the insurance lapse or the date the Contract has ended, whichever is later, to cover the County's potential exposure to liability during the period of the insurance lapse.

In the event that the Contractor does not maintain insurance as required by the Contract, the Contractor shall immediately cure such lapse at the Contractor's sole cost and expense, and pay the County in full for all costs and expenses incurred by the County under the Contract as a result of the Contractor's failure to maintain insurance, including, but not limited to, any and all costs and reasonable attorney's fees relating to the County's efforts to cure such lapse in insurance coverage. Such costs and attorney's fees, which shall not exceed One Thousand Five Hundred and 00/100 Dollars (\$1500.00), shall be automatically deducted from monies owed to the Contractor by the County under the Contract. If the monies owed to the Contractor under the Contract are less than the amount required to cure the lapse in coverage, the Contractor shall pay such monies to the County upon written demand. Moreover, upon any lapse of the required insurance by the Contractor, the County shall immediately retain five percent (5%) of the total value of the Contract to cover the County's potential exposure to liability during the period of such insurance lapse. The five percent (5%) retainage shall be immediately deducted from any monies due to the Contractor by the County under the Contract and held by the County for a period of six (6) months from the date of the cure of the insurance lapse or a period of six (6) months from the date the Contract has terminated, expired, or otherwise ended, whichever is later. If no claim is received by or lawsuits filed against the County for any applicable matters, accidents or injuries that occurred during the lapse of insurance, the retainage shall be promptly returned to the Contractor upon written request. Notwithstanding the foregoing, in the event a claim is received by or lawsuit is filed against the County for applicable matters, accidents, or injuries that occurred during the Contractor's insurance lapse, the County shall use the retainage to defend, pay costs of defense, or settle any and all such claims, lawsuits, or judgments, with any and all amounts in excess of the retainage to be paid by the Contractor upon written demand by the County.

11. TERMINATION / SUSPENSION

- A. Suspension. Should County desire to suspend the Services, but not terminate the Contract, County shall issue a written order to stop work. The written order shall set out the terms of the suspension. Contractor shall stop all Services as set forth in this Contract and will cease to incur costs to County during the term of the suspension. Contractor shall resume work when notified to do so by County in a written authorization to proceed. If a change in the terms and conditions of payment for Services of this Contract is necessary because of a suspension, a mutually agreed Contract amendment will be executed in accordance with this Contract.
- B. Termination. County may, at its option and without prejudice to any other remedy to which it may be entitled to at law or in equity, or elsewhere under this Contract, terminate this Contract, in whole or in part, by giving thirty (30) calendar days prior written notice thereof to Contractor with the understanding that all Services being performed under this Contract shall cease upon the date specified in such notice. County shall compensate the Contractor in accordance with the terms of this Contract for the Services performed prior to the date specified in such notice. In the event of cancellation, Contractor shall cease any and all Services under this Contract on the date of termination and to the extent specified in the notice of termination. Upon receipt of such notice, Contractor shall not incur any new obligations or perform any additional Services and shall cancel any outstanding obligations or Services to be provided. To the extent funds are available and reimbursement is permitted, County will reimburse Contractor for non-canceled obligations that were incurred prior to the termination date. Upon termination of this Contract as herein above provided, any and all unspent funds that were paid by County to Contractor under this Contract and any and all County data, documents and information in Contractor's possession shall be returned to County within five (5) business days of the date of termination. In no event shall County's termination of this Contract, for any reason, subject County to liability.
- 1) Without Cause: This Contract may be terminated, in whole or in part, without cause, by County upon thirty (30) calendar days prior written notice to Contractor.
 - 2) With Cause: County reserves the right to terminate this Contract immediately, in whole or in part, at its sole discretion, for the following reasons:
 - a) Lack of, or reduction in, funding or resources;
 - b) Non-Performance. Contractor's non-performance of the specifications of this Contract or non-compliance with the terms of this Contract shall be a basis for termination of the Contract by the County. Termination, in whole or in part, by the County under this Section may be made at County's option and without prejudice to any other remedy to which County may be entitled to at law or in equity, or elsewhere under this Contract, by giving thirty (30) days written notice to Contractor with the understanding that all Services being performed under this Contract shall cease upon the date specified in such notice. County shall not pay for work, equipment, Services or supplies that are unsatisfactory or unauthorized. At County's sole discretion and with written notice by County, Contractor may be given a reasonable opportunity prior to termination to correct any deficiency in the work or Services performed under this Contract. County will consider a reasonable time to be thirty (30) calendar days to cure any problems and/or

deficiencies with Contractor's performance, such problems and/or deficiencies being determined by County. Nothing herein, however, shall be construed as negating the basis for termination for non-performance and shall in no way limit or waive County's right to terminate this Contract under any other provisions herein.

- c) Contractor's improper, misuse or inept performance of Services under this Contract;
- d) Contractor's failure to comply with the terms and provisions of this Contract;
- e) Contractor's submission of invoices, data, statements and/or reports that are incorrect, incomplete and/or false in any way;
- f) In County's sole discretion, if termination is necessary to protect the health and safety of clients;
- g) If Contractor becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver or similar officer, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key employees; and/or
- h) Contractor's inability to perform under this Contract due to judicial order, injunction or any other court proceeding.

12. NOTICE

Any notice to be given under this Contract shall be deemed to have been given if reduced to writing and delivered in person or mailed by overnight or Registered Mail, postage pre-paid, to the party who is to receive such notice, demand or request at the addresses set forth below. Such notice, demand or request shall be deemed to have been given three (3) business days subsequent to the date it was so delivered or mailed.

To: County:

Keta Dickerson, Program Manager
Dallas County Divert Court
133 N. Industrial Blvd., 5th Floor A18
Dallas, TX 75207

w/a copy to:
Chong Choe
Assistant District Attorney
411 Elm Street, 5th Floor
Dallas, TX 75202

To Contractor:

Douglas W. Denton, Executive Director
Homeward Bound, Inc.
233 W. Tenth St.
Dallas, TX 75208
(214) 941-3500

Lenora Sevillian
Purchasing Contracts Supervisor
Dallas County Purchasing Department
509 Main Street, 6th Floor, Room #623
Dallas, TX 75202

13. SEVERABILITY

If any provision of this Contract is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions in this Contract. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

14. SOVEREIGN IMMUNITY

This Contract is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and state laws. The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver of any immunities from suit or from liability that the County has by operation of law. Nothing in this Contract is intended to benefit any third party beneficiary.

15. COMPLIANCE WITH LAWS AND VENUE

In providing Services required by this Contract, Contractor must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, regulations, grant requirements, licenses, legal certifications, or inspections required for the Services, facilities, equipment, or materials. This Contract shall be governed by Texas law and exclusive venue for any legal action arising from this Contract shall lie in Dallas County, Texas.

16. AMENDMENTS AND CHANGES IN THE LAW

No modification, amendment, novation, renewal or other alteration of this Contract shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition or deletion to the terms of this Contract which are required by changes in federal or state law are automatically incorporated herein without written amendment to this Contract and shall be effective on the date designated by said law.

17. ENTIRE AGREEMENT

This Contract, including all Exhibits and any attachments, constitutes the entire agreement between the parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written.

18. BINDING EFFECT

This Contract and the respective rights and obligations of the parties hereto shall inure to the benefit and be binding upon the successors and assigns of the parties hereto, as well as the parties themselves.

19. GOVERNMENT FUNDED PROJECT

If Contract is funded in part by either the State of Texas or the federal government, the Contractor agrees to timely comply without additional cost or expense to County, unless otherwise specified herein, to any statute, rule, regulation, grant, contract provision or other state or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the Services rendered under the terms of this Contract.

20. DEFAULT/CUMULATIVE RIGHTS/MITIGATION

It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Contract are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Contractor has a duty to mitigate damages.

21. FISCAL FUNDING CLAUSE

Notwithstanding any provisions contained herein, the obligations of the County under this Contract are expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Contract and any extensions thereto. Contractor shall have no right of action against County in the event County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Contract or failure to budget or authorize funding for this Contract during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Contract by written notice to Contractor at the earliest possible time prior to the end of its fiscal year.

22. COUNTERPARTS, NUMBER/GENDER AND HEADINGS

This Contract may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Contract shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Contract.

23. PREVENTION OF FRAUD AND ABUSE

Contractor shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Contract. Any known or suspected incident of fraud or program abuse involving Contractor's employees or agents shall be reported immediately by the County to the Office of the Inspector General for appropriate action. Moreover, Contractor warrants to be not listed on a local, county, state or federal consolidated list of debarred, suspended and ineligible contractors and grantees. Contractor and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds collected pursuant to this Contract does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. Contractor shall, upon notice by County, refund

expenditures of the Contractor that are contrary to this Contract and deemed inappropriate by the County.

24. INDEPENDENT CONTRACTOR

Contractor, including its agents or employees, is an independent contractor and not an agent, servant, joint enterpriser, joint venturer or employee of the County, and is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work covered under this Contract.

25. ASSIGNMENT

Contractor assures that it will not transfer or assign its interest in this Contract without prior written consent of County. Contractor understands that in the event that all or substantially all of Contractor's assets are acquired by another entity, Contractor is still obligated to fulfill the terms and conditions of this Contract. County approval to transfer or assign Contractor's interest in this Contract to an entity that acquires all or substantially all of Contractor's assets is subject to formal approval by the County Commissioners Court. In the event of the assignment or sale of Contractor's assets, the County, at its option, may terminate this Contract and at no cost to the County retain the use of any of the deliverables and other items provided under this Contract.

26. SUBCONTRACTING

Contractor may not enter into agreements with subcontractors for delivery of the designated Services outlined in this Contract without prior written consent of the County, which consent shall not be unreasonably withheld. The costs of all subcontracted services are included in the fees paid herein. Subcontracts, if any, entered into by the Contractor will be in writing and subject to all requirements herein. Contractor agrees that Contractor is solely responsible to County for the performance of this Contract. Contractor shall pay all subcontractors in a timely manner. County shall have the right to prohibit Contractor from using any subcontractor.

27. CONTRA PROFERENTUM

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, the Agreement shall not be construed against the party who drafted the Agreement and such party shall not be responsible for the language used.

28. CONFIDENTIAL INFORMATION AND OWNERSHIP

- A. Ownership of County Data. All County data shall remain the property of County. The County data shall not be otherwise used, disclosed, sold, assigned, leased or provided, or commercially exploited by or on behalf of Contractor and its personnel, including, without limitation, employees, officers, agents, subcontractors, invitees, third party vendors, or assigns (collectively, "Contractor"), to any third party in any respect without County's written consent. Contractor shall not delete or destroy any County data or media on which County data resides without prior written authorization of County (acting through the County Commissioners Court). At no cost to County, Contractor shall upon request promptly return to County, in the format and on the media in use as of the date of the request, any and all requested portion of any County data it may possess or control.

- B. Contractor shall not disclose privileged or confidential communications or information acquired in the course of the performance of the Services under this Contract, unless authorized by law. Contractor agrees to safeguard and adhere to all confidentiality, privacy and security requirements according to this Contract and the applicable federal, state and local rules and regulations for all information deemed confidential.
- C. Confidentiality. "Confidential Information" means information designated as confidential or which would be recognized as confidential by a reasonable person from its nature and the circumstances surrounding its disclosure. Confidential Information includes, without limiting the generality of the foregoing, County software, County data, the terms of this Contract, and information: (1) relating to disclosing Party's business, policies, strategies, operations, finances, plans or opportunities, including the identity of, or particulars about, the County's clients, customers or service providers; (2) marked or otherwise identified as confidential, restricted, secret or proprietary, including, without limiting the generality of the foregoing, information acquired by inspection or oral disclosure provided such information acquired by inspection or oral disclosure was identified as confidential at the time of disclosure or inspection; (3) financial/operating risk patterns and specific audit sample techniques of County; or (4) recognized by statute as confidential, including information relating to individual health, mental health, sexually transmitted diseases, and HIV-AIDS.
- D. Exceptions. Notwithstanding the foregoing, Confidential Information does not include information that the receiving Party can establish: (1) has become generally available to the public or commonly known in either Party's business other than as a result of a breach by the receiving Party of any obligation to the disclosing Party; (2) was known to the receiving Party prior to disclosure to the receiving Party by the disclosing Party by reason other than having been previously disclosed in confidence to the receiving Party; (3) was disclosed to the receiving Party on a non-confidential basis by a third party who did not owe an obligation of confidence to the disclosing Party with respect to the disclosed information; (4) was independently developed by the receiving Party without any recourse to any part of the Confidential Information; or (5) in the case of County, any information related to the Services which County has publicly disclosed in connection with this Contract, including, without limitation, information of an operational, technical or financial nature related to County.
- E. Use of Confidential Information. During the term of this Contract, the receiving Party may: (1) disclose Confidential Information received from the disclosing Party only to its employees, agents, officers, directors, attorneys, and subcontractors who have a need to know such information exclusively for the purpose of performing pursuant to this Contract and who have executed a nondisclosure agreement containing provisions no less restrictive than those contained herein, or who are subject to other equivalent means to ensure confidentiality; (2) reproduce the Confidential Information received from the disclosing Party only as required to perform pursuant to this Contract; and (3) disclose Confidential Information as required by law, provided the receiving Party gives the disclosing Party prompt notice prior to such disclosure to allow the disclosing Party to make a reasonable effort to obtain a protective order or otherwise protect the confidentiality of such information. Except as otherwise specifically provided in this Contract, the receiving Party shall not during the term and after expiration or earlier termination of this Contract: (1) disclose, in whole or in part, any Confidential Information received directly or indirectly from the disclosing Party; or (2) sell, rent, lease, transfer, encumber, pledge, reproduce, publish, market, transmit, translate, modify, reverse

engineer, compile, disassemble or otherwise use the Confidential Information in whole or in part.

- F. Care. The receiving Party shall exercise the same care in preventing unauthorized disclosure or use of the Confidential Information that it takes to protect its own information of a similar nature, but in no event less than reasonable care.
- G. Return of Confidential Information. Immediately upon the disclosing Party's request, and at the expiration or earlier termination of this Contract or any other applicable renewal or extension hereto, the receiving Party shall return or destroy all materials containing Confidential Information, including without limitation, all originals, copies, reproductions and summaries, and all copies of Confidential Information present on magnetic media, optical disk, volatile memory or other storage device, in a manner that assures the Confidential Information is rendered unrecoverable.
- H. Notwithstanding the foregoing, County agrees, to the extent permitted by the Public Information Act, to keep confidential (and store in a secure area with limited access) and will not copy, publish, sell, exchange, disclose, or provide to others or use any information, documents or data, provided to or disclosed to County, or any information related to this Contract, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, for any purposes other than performing County's obligations under this Contract, unless prior written notification is given by County that such specified item will be released under the Public Information Act.
- I. Confidential or Proprietary Marking. Any information or documents the Contractor uses in the performance of the Services provided under this Contract that Contractor considers confidential or proprietary or that contains trade secrets must be clearly marked accordingly. This marking must be explicit as to the designated information. The designation, however, may not necessarily guarantee the non-release of the documents or information under the Texas Public Information Act or otherwise required by law.
- J. County Software. County shall identify the County software, if any, that Contractor is authorized to use to perform the Services pursuant to this Contract and specify the rights of Contractor to use the County software for the benefit of the County.
- K. Contractor Software. Contractor shall identify any Contractor software that will be used to provide the Services under this Contract. Without the fully informed written consent of the County (acting through the County Commissioners Court, County Commissioners Court Administrator, or County Contract Manager), Contractor shall not use in performing the Services pursuant to this Contract any Contractor software that is not commercially available to County.
- L. Use of Concepts. Nothing in this Contract shall restrict a party from the use of any ideas, concepts, know-how, methods or techniques that such party, individually or jointly, develops or discloses under this Contract or obtains from third parties, except to the extent that such use infringes the other party's patent rights, copyrights or other intellectual property rights or involves a disclosure or use of the other party's Confidential Information.

- M. Security. To the extent Contractor has access to County facilities and systems, Contractor will comply with the security procedures that are in effect during the Term of this Contract for the security of County's facilities and County data. In the event that Contractor personnel may have the ability to defeat systems security provisions on devices containing related and unrelated confidential information or data, Contractor covenants that it shall not access such County data or information or assert waiver of these confidentiality requirements by virtue of Contractor's access.
- N. Survival. The provisions of this Section shall survive cancellation, termination and/or expiration of this Contract, or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.

29. ASSURANCES

- A. Contractor agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
- B. Contractor assures that neither it nor its employees, volunteers, agents or officers shall receive personal benefits, commission, consideration, or gains in performance of the Services outlined in this Contract. Furthermore, Contractor agrees to disclose prior to commencement of a particular assignment any material/financial interests that it or a third party may have in the Services required under this Contract.
- C. No-Discrimination. This Contract is subject to applicable federal and state laws and executive orders, including the Fair Labor Standards Act of 1938, relating to equal opportunity and nondiscrimination in employment. Neither Contractor nor its agents or subcontractors shall discriminate in their employment practices against any person by reason of disability, age, race, creed, national origin, color, religion, sex, political affiliation, or veteran status. In addition Contractor assures that no person will, on the grounds of disability, age, race, creed, national origin, color, religion, sex, political affiliation, or veteran status, be excluded from, be denied the benefit of or be subjected to discrimination under any program or activity funded in whole or in part under this Contract. Contractor agrees to comply, and to cause its agents and subcontractors to comply, with the provisions of said laws and orders to the extent any such laws and orders are applicable in the performance of this Contract.
- D. Contractor assures that funds received pursuant to this Contract will not be used for lobbying the Texas legislature or any governmental agency in connection with a particular contract.
- E. Contractor shall pay all subcontractors in a timely manner. County shall have no liability to any subcontractors in the event Contractor does not pay or delays payment to any subcontractors. At termination or expiration of this Contract, Contractor shall deliver to County an affidavit of all bills paid. Final payment shall be contingent upon receipt of such affidavits as resolution of all accounting for which County is or may be liable under this Contract.
- F. Under Section 231.006, Texas Family Code, Contractor certifies to County that the owner(s) of at least a 25% interest in the organization is not delinquent in any child support obligation that renders him/her ineligible to receive payment under the terms of

this Contract. Contractor hereby acknowledges that this Contract may be terminated and payment may be withheld if this Certification is inaccurate.

- G. Contractor certifies that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency.
- H. Contractor assures that it shall not receive personal benefits or gains in performance of the Services outlined in this Contract. Furthermore, Contractor agrees to disclose prior to commencement of a particular assignment any material/financial interests that it or a third party may have in the Services required under this Contract.
- I. Best Efforts to Minimize Costs to County. Contractor shall use its best efforts to complete each assigned task in as economical a manner as possible and to minimize any charges incurred in connection therewith to the maximum extent possible, consistent with Contractor's other obligations under this Contract.
- J. Failure to comply with any of these assurances or any other requirements specified within this Contract will put Contractor in default and/or breach of this Contract and may result, at the sole discretion of County, in the disallowance of funds and the withholding of future awards, in addition to any other remedies permitted by law.
- K. Governmental Consent. Contractor warrants that no consent, approval, or withholding of objection is required from any governmental authority with respect to the entering into or the performance of this Contract.
- L. Corporate Good Standing. Contractor represents and warrants that it: (1) is a non-profit corporation duly incorporated, validly existing and in good standing; (2) has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder; (3) is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it except when the failure to be so licensed, authorized or qualified would not have a material adverse effect on Contractor's ability to fulfill its obligations hereunder.

30. CONTRACTOR'S WARRANTIES

- A. No Actions, Suits, or Proceedings. Contractor warrants that there are no actions, suits, or proceedings, pending or threatened, that will have a material adverse effect on Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will notify County immediately if Contractor becomes aware of any action, suit, or proceeding, pending or threatened, which will have a material adverse effect on Contractor's ability to fulfill the obligations under this Contract.
- B. Warranty of Contractor's Capability. Contractor warrants that it is financially capable of fulfilling all requirements of this Contract and that Contractor is a validly organized entity that has the authority to enter into this Contract. Contractor warrants that it is not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into this Contract.

- C. Professional Quality. Contractor warrants to County that all materials and Services will be of professional quality conforming to generally accepted practices, and that all Services provided under this Contract will be performed in a manner consistent with that degree of care, qualification and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. If there are no applicable or recognized professional standards in the applicable area or areas of expertise required to perform such Services, then Contractor will perform all Services in a good and professional manner that meets County's goals and objectives as stated herein as well as otherwise adds value to and/or improves the performance of County's expectations, objectives and purposes as stated in this Contract. Any work that is determined by County to be less than professional quality will be corrected without charge. This warranty extends for ninety (90) business days past termination or expiration of this Contract. This warranty is limited to rework of the unsatisfactory product without change to the original specifications and without regard to the amount of the effort expended on the original work product.

31. TRANSITION SERVICES REQUIRED OF CONTRACTOR

Upon notice of termination and/or expiration of this Contract, the County shall immediately have the right to audit any and all records of Contractor relating to this Contract. Moreover, upon termination and/or expiration date of this Contract, Contractor agrees to transition the Services provided herein in a cooperative manner and provide anything requested from the County at no additional cost, including, but not limited to the following, upon date of termination and/or expiration: (i) all Contract and Services documentation identified in a complete, neat and orderly manner; and (ii) good faith pledge to cooperate with County upon transition of Services to another contractor or County department providing the same or similar Services; and (iii) final accounting of all income from the Contract; and (iv) downloading and removal of all County information from the Contractor's equipment and software; and (v) removal of Contractor's Services without affecting the integrity of County's systems; and (vi) all records and County property. This provision shall survive Contract termination.

32. TAX

Dallas County, as a county of the State of Texas, is exempt from the payment of Texas state and local sales, excise, and use taxes pursuant to Tex. Tax Code § 151.309, and shall therefore not be liable or responsible to the Contractor for the payment of such taxes under this Contract.

The fees paid to Contractor pursuant to this Contract are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable effective date of this Contract and based upon or measured by Contractor's cost in acquiring or providing products and/or Services and related materials and supplies furnished or used by Contractor in performing its obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by Contractor.

Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by Contractor for work performed under the terms of this Contract and agrees to indemnify and save harmless the County from any such contribution or taxes or liability.

33. SIGNATORY WARRANTY

The undersigned signatories for the parties hereby represent and warrant that they are officers of their respective organizations for which they have executed this Contract and that they have full and complete authorities to enter into this Contract on behalf of their respective organizations and that the executions thereof are the acts of the parties involved and have been delivered and constitute legal, valid and binding obligations of the respective parties.

COUNTY (Dallas County):

CONTRACTOR (Homeward Bound, Inc.):

X
BY: Clay Lewis Jenkins
Dallas County Judge

BY: Douglas W. Denton
Executive Director

DATE: May 5, 2015

DATE: 4-9-15

Recommended:

BY: Robert Burns

***Approved as to Form:**

BY: Chong Choe
Assistant District Attorney

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).