

APPENDIX F

Sample Agreement

Behavioral Health Services Agreement

THIS AGREEMENT entered into this day of between the Arizona Superior Court in Pima County, hereinafter called COURT; and XXXXXXXX, hereinafter called CONTRACTOR.

WITNESSETH

WHEREAS, COURT requires the services of a CONTRACTOR qualified to provide Behavioral Health Services to Adult Probationers; and

WHEREAS, CONTRACTOR is qualified and willing to provide such services; and

WHEREAS, pursuant to Request for Qualifications # , CONTRACTOR was deemed qualified to provide such services to the COURT.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I - TERM

This Agreement shall commence on and terminate on , unless sooner terminated pursuant to the provisions of this Agreement.

ARTICLE II - SCOPE

CONTRACTOR shall provide services hereinafter described as behavioral health services, per the service specifications, key personnel, and any other information submitted in CONTRACTOR’S response to RFQ # and in accordance with the standards and practices of service provider’s profession. Treatment services to be provided:

- Substance Abuse
- DUI
- Domestic Violence
- Sex Offender
- Residential Treatment Intervention

ARTICLE III - PAYMENT

In consideration of the services specified in this Agreement, the COURT agrees to pay CONTRACTOR for services as described on the attached *Compensation Schedule*.

Total payment shall not exceed \$xxxxxxx unless a duly authorized amendment has been issued and signed by the parties hereto. Payment terms are net 30 days.

ARTICLE IV - NON-APPROPRIATION OF FUNDS

Each payment obligation of the COURT created hereby is conditioned upon the availability of funds which are appropriated for the payment of such an obligation. If funds are not available for the continuance of the contract services, the contract period for the services may be terminated by the COURT at the end of the period for which funds are available. The COURT shall notify the CONTRACTOR at the earliest possible time which services will or may be affected by a shortage of funds. No penalty shall accrue to the COURT in the event this provision is exercised, and the COURT shall not be obligated or liable for any future payments due or for any damages as a result of the termination under this section. This provision shall not be construed so as to permit the COURT to terminate this agreement or any service in order to acquire a similar service from another CONTRACTOR.

ARTICLE V - TERMINATION

COURT reserves the right to terminate this Agreement at any time and without cause by serving upon CONTRACTOR at least 30 days advance written notice of such intent to terminate. In the event of such termination, the COURT'S only obligation to CONTRACTOR shall be payment for services rendered prior to the date of termination.

This Agreement may be terminated at any time without advance notice and without further obligation to the COURT when the CONTRACTOR is found to be in default of any provision of this Agreement. This Agreement may be cancelled without penalty or further obligation pursuant to A.R.S. §§ 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the COURT is or becomes, at any time while the Agreement or any extension for the Agreement is in effect, an employee of, or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement.

ARTICLE VI - EXTENSION

Court shall have the option to extend this agreement for three (3) additional one-year periods. Any modification or extension shall be by formal written amendment and executed by the parties hereto.

ARTICLE VII - APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Arizona, and suits pertaining to this Agreement may be brought only in courts in the State of Arizona.

ARTICLE VIII - COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all City, County, State and Federal laws, ordinances, rules, regulations, and statutes which may be applicable to this Agreement.

Compliance Requirements for A.R.S. §§ 41-4401, Government Procurement: E-Verify Requirement

1. The contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. §§ 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)
2. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.
3. The State Agency retains the legal right to inspect the papers of any employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph 1.

ARTICLE IX - STATUS OF CONTRACTOR

The status of the CONTRACTOR shall be that of an independent CONTRACTOR and CONTRACTOR shall not be considered an employee of the State of Arizona or the Arizona Superior Court in Pima County and shall not be entitled to receive any of the fringe benefits associated with regular employment and will not be subject to the provisions of the merit system. CONTRACTOR will be responsible for payment of all Federal, State and Local taxes associated with the compensation received by CONTRACTOR from COURT. CONTRACTOR shall be responsible for program development and operation without supervision by COURT.

ARTICLE X - INDEMNIFICATION

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

ARTICLE XI - ASSIGNMENT OF INTEREST

No right or interest in this Agreement shall be assigned by CONTRACTOR without prior written permission of the COURT. No delegation of any duty of CONTRACTOR shall be made without prior written permission of the COURT.

ARTICLE XII - NON-DISCRIMINATION

CONTRACTOR shall not discriminate, and shall require that any subcontractor not discriminate, in the provision of program services on the basis of race, age, creed, color, religion, sex, condition of disability or national origin. Contractor and all subcontractors shall comply with Supreme Court Administrative Rule 1-301 (equal employment opportunity policy) and with all applicable court, state and federal laws, rules, regulations and executive orders.

ARTICLE XIII - RECORDS RETENTION

Pursuant to A.R.S. § 35-214, CONTRACTOR shall retain, and shall require all subcontractors to retain, for inspection and audit by the COURT and the Arizona Auditor General, all books, accounts, reports, files and other records relating to the bidding and performance of the Agreement for a period of five years after its completion. Upon request by the COURT or the Auditor General, a legible copy or the original of all such records shall be produced by CONTRACTOR at the administrative office of the Court or the office of the Auditor General.

ARTICLE XIV - OWNERSHIP OF RECORDS

Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of the COURT. The CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The CONTRACTOR shall not use or release these materials without the prior written consent of the COURT.

ARTICLE XV - CONFIDENTIALITY OF INFORMATION

CONTRACTOR shall observe and abide by all applicable State and Federal statutes and regulations regarding use or disclosure of information, including but not limited to information concerning applicants for and recipients of Agreement services. The CONTRACTOR shall release information to the COURT and the Attorney General's Office upon request.

ARTICLE XVI - INSURANCE REQUIREMENTS

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language:
“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor”.
- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. **Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: *“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor”.*
- b. Policy shall contain a waiver of subrogation against the State of Arizona, as departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include the following provisions:

- 1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
- 2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
- 3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **(Arizona Superior Court in Pima County, 9th Floor, Contracts & Procurement, 110 W. Congress, Tucson, AZ 85701)** and shall be sent by certified mail, return receipt requested.

- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an “A.M. Best” rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(Arizona Superior Court in Pima County, 9th Floor, Contracts & Procurement, 110 W. Congress, Tucson, AZ 85701)**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

- F. **SUBCONTRACTORS:** Contractors’ certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- H. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

ARTICLE XVII - ARBITRATION

This Agreement is subject to arbitration to the extent required by A.R.S. § 12-1518, A.R.S. § 12-133 and Rule 3.9, Pima County Superior Court Local Rules.

ARTICLE XVIII - AMERICANS WITH DISABILITIES ACT

CONTRACTOR shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

ARTICLE XIX - NON WAIVER

The failure of COURT to insist in any one or more instances upon the full complete performance of any of the terms and conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

ARTICLE XX - SEVERABILITY

Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

ARTICLE XXI - OVERCHARGES BY ANTITRUST VIOLATIONS

The COURT maintains that in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, CONTRACTOR hereby assigns to the COURT any and all claims for such overcharges as to the goods or services used to fulfill the Agreement.

ARTICLE XXII - SUBCONTRACTOR

CONTRACTOR will be fully responsible for all acts and omissions of its subcontractor(s) and of persons directly or indirectly employed by subcontractor and of persons for whose acts any of them may be liable to the same extent that the CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this agreement shall create any obligation on the part of COURT to pay or see to the payment of any money due any subcontractor except as may be required by law.

ARTICLE XXIII- OTHER DOCUMENTS

CONTRACTOR and COURT in entering into this Agreement have relied upon information provided in RFQ# and on information provided in the CONTRACTOR'S response to said proposal. These documents are hereby incorporated into and made a part of this Agreement as if set forth in full herein.

ARTICLE XXIV – ACCEPTABLE FORMS OF SIGNATURES

This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument, and a facsimile transmission or electronic delivery of a manual signature shall be deemed to be an original signature.

ARTICLE XXV - REMEDIES

Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.

ARTICLE XXVI - NOTICES

Any notice required or permitted to be given under this Agreement shall be in writing and shall be served by delivery or by certified mail upon the other party as follows:

COURT:

CONTRACTOR:

Arizona Superior Court in Pima County
110 West Congress, 9th floor
Tucson, AZ 85701
(520) 724-4218
(520) 724-3824 Fax

ARTICLE XXVII - ENTIRE AGREEMENT

This document constitutes the entire Agreement between the parties and shall not be modified, amended, altered or changed except through a written amendment and signed by the parties.

IN WITNESS THEREOF, the parties have affixed their signatures to this agreement the date first written above.

ARIZONA SUPERIOR COURT IN PIMA COUNTY

PROVIDER

Presiding Judge

Date

Date