

**SERVICES
OPERATIONS AGREEMENT
FOR
COMMUNITY SUPERVISION AND
CORRECTIONS DEPARTMENT**

This Operations Agreement (the "AGREEMENT") is made and entered into by and between Community Supervision and Corrections Department ("DEPARTMENT"), a political entity of the Judicial District and

Jerry Amaya License#003605-038272 ("VENDOR")

2442 Adrian St. Address

Harlingen, Texas 78552 City, State, Zip

as of the 1st day of November, 2006.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the foregoing, the mutual benefits contemplated hereby and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

APPOINTMENT OF VENDOR; TERM

Appointment of VENDOR. In accordance with the terms and conditions set forth herein, and in consideration of the Payments hereinafter provided, VENDOR is hereby appointed to provide to DEPARTMENT, and VENDOR hereby agrees to furnish to DEPARTMENT, the Services provided for herein.

Term. This AGREEMENT is effective on the date set forth in the initial paragraph hereof and shall continue until August 31, 2008, unless it is terminated earlier pursuant to the provisions hereof, provided, however, that DEPARTMENT shall have the option to renew and extend this AGREEMENT for a period of one year (with such changes as to which VENDOR shall agree), upon the giving to VENDOR a written notice of such intention no later than thirty (30) days prior to the expiration of the initial term.

**ARTICLE I
RATES, MINIMUM REQUIREMENTS, AND STATEMENT OF SERVICES**

1.1 Vendor Rates. DEPARTMENT agrees to make Payments to VENDOR for the delivery of Services, not to exceed \$29,000 per year for November 1, 2006, through August 31, 2008. VENDOR acknowledges that the total dollar amount of the AGREEMENT is subject to change, at department's discretion, based on needs and circumstances that arise within the overall DEPARTMENT program. VENDOR agrees to the following rates for services:

\$80.00 per group hour, not to \$29,000 per year

1.3 Services. The VENDOR shall, in accordance with the terms of this AGREEMENT, provide all necessary personnel, equipment, materials, supplies, facilities, and services (except as may be furnished by the DEPARTMENT as specified in writing as part of this AGREEMENT) and do all things necessary for, or incidental to, the provision of the services listed as follows:

Provide Group therapy which utilizes cognitive-behavioral treatment approaches for the clients referred by the Sex Offender Program Community Supervision Officer and/or Specialized Caseload Section Supervisor .

Prepare and submit the following to the Community Supervision Officer:

1. **A verification of a signed treatment contract**
2. **A written treatment plan within 30 days after the sex offender is enrolled in a treatment program and an updated treatment plan, as needed.**
3. **A report, by the 15th day of each month, stating the total number of counseling sessions attended by the client and his/her progress/regress.**
4. **Notify the Community Supervision Officer of the following by the end of the next business day;**
 - a. **Any failure to attend treatment. Serious non-compliance with the treatment program, such as continued non-compliance or refusal to complete homework assignments, inappropriate or aggressive behaviors, poor participation and failure to pay treatment fees.**
 - b. **When the need arises to unsuccessfully terminate or suspend the offender from treatment. Termination shall not occur without communication with the Community Supervision Officer.**
 - c. **A change in treatment provider shall not occur without communication with the Community Supervision Officer.**
 - d. **Engaging in high-risk behavior and/or violating supervision condition or treatment rules.**
 - e. **A report or summary detailing the reasons for termination or suspension from the treatment program and recommendations for further case management.**

Provide on-going consultation to the Community Supervision Officer as may be deemed necessary by Department, Vendor or Community Supervision Officer.

The CSCD will provide facilities to hold such group sessions.

1.7 Diagnosis. In its treatment or provision of services to Defendants, VENDOR shall:

- a) Provide appropriate treatment or services as designated by DEPARTMENT;
- b) Coordinate with DEPARTMENT to identify needs of Defendants that are beyond the scope of VENDOR'S Services and make appropriate referrals in such circumstances; and
- c) Develop and implement procedures for Services (or referrals) for Defendants with dual diagnosis and/or mental and physical disabilities.

1.8 Participation. In order to ensure maximum participation of Defendants in its program, VENDOR shall:

- a) Contact DEPARTMENT within twenty-four (24) hours whenever any Defendant fails to comply with his or her recommended treatment or participation in services, including failure to show for initial appointment or unauthorized departures;

- b) Document on a weekly basis the Defendant's level of participation and compliance with treatment or service goals and objectives; and
- c) The VENDOR must maintain a signature log of all face-to-face contacts with the Defendant. The log must contain what service was performed, the time, date, and be signed by the counselor and the Defendant.

1.9 Discharge. The discharge of any Defendant shall be made in accordance with the following:

- a) Prior to discharge, VENDOR shall schedule and coordinate with Defendant's community supervision officer or designee to evaluate if any additional services are required for Defendant. A copy of each Defendant's discharge plan and discharge summary shall be submitted to DEPARTMENT within three (3) days of such discharge; and
- b) Under no circumstances may VENDOR discharge any Defendant without having furnished DEPARTMENT with prior written notification thereof.

1.10 Referrals. The DEPARTMENT retains control over the Defendants referred to VENDOR for the provision of services. If the Defendant is determined to be in need of additional or different services, the Defendant is to be referred back to the DEPARTMENT for further action. The process by which this action will occur will be addressed in the Operations Plan.

1.11 No-Shows. DEPARTMENT will not pay the full rate to VENDOR for Defendants who fail to attend sessions or meetings

1.12 Court Testimony. VENDOR agrees to provide testimony in court, if required, at no additional cost to the DEPARTMENT.

1.13 Policies and Procedures. The Services for Defendants shall include policies and procedures for admission and discharge, discharge planning, participation in treatment, transportation (as necessary), safety and security, clinical supervision, referral activities, house management and government (as applicable), documentation of Services, and incident reporting and resolution, which shall be in writing and available to DEPARTMENT prior to implementation. VENDOR shall notify the DEPARTMENT in writing of deviations from such policies and procedures, whether temporary or permanent.

1.15 Coordination with DEPARTMENT. VENDOR shall coordinate the following tasks with the DEPARTMENT:

- a) Develop alternatives to be utilized for incidents of non-compliance with program rules;
- b) Submit progress reports on each Defendant, indicating progress and compliance/non-compliance with program;
- c) Participate in meetings as the DEPARTMENT directs; and
- d) Comply with DEPARTMENT operational policies and procedures as set forth by the DEPARTMENT Program and/or the State program.

1.16 Definitions. The following terms used in this AGREEMENT shall, unless the context indicates otherwise, have the meanings set forth below:

AGREEMENT - means this Operations AGREEMENT with all exhibits hereto.

Contract Monitor - means the Person(s) designated by DEPARTMENT as such to ensure that VENDOR complies with the terms hereof, by conducting performance audits of the Operational Plan and financial audits of the Program Budget, if applicable.

Counselor - means a Person with appropriate licensure who renders counseling or counseling-related services to an individual, group, organization, corporation, institution, or the general public for compensation.

Defendant - means each individual who receives Services from VENDOR hereunder who qualifies for Services and who has been ordered by a court of legal jurisdiction to participate in receiving Services.

DEPARTMENT Policies - means all written policies, procedures, standards, guidelines, directives, and manuals of DEPARTMENT, as same may be amended from time to time, which DEPARTMENT has made available to VENDOR and with which VENDOR has an affirmative obligation to be and remain familiar.

Facility - means the licensed treatment facility where VENDOR will provide Services pursuant to the terms hereof or a Community Corrections Facility as operated by the DEPARTMENT.

Licensure Rules - means the terms and provisions contained in applicable regulatory guidelines.

Midnight Strength Report - means the official numerical count of the number of Defendants who are Residents present at the Facility at the end of each day calculated at 12:00 midnight, which number shall not include any Defendants who were previously removed on that day. Defendants on a temporary leave for less than forty-eight (48) hours shall be included in the count.

Monthly Invoice - means that certain form or electronic reporting mechanism that VENDOR shall prepare and submit to DEPARTMENT no later than the seventh (7th) day after the end of the preceding month, based on the VENDOR Rate and yielding the Monthly VENDOR Payment to be made by DEPARTMENT, a copy of which form is attached hereto as Exhibit B.

Operational Plan - means the written operating and audit system devised jointly by DEPARTMENT and VENDOR prior to and during the term hereof pursuant to VENDOR'S policies and procedures submitted in response to the RFP or ITB (if applicable) whereby the delivery of Services shall be evaluated and monitored, including the Performance Measures to track and evaluate achievement results of Defendants, which plan shall contain a mechanism for monthly self-monitoring reports by VENDOR.

Outpatient - means any Defendant who receives Services on an hourly basis pursuant to the terms hereof and who is not a resident in the facility providing treatment.

Payment or Payments - means amount(s) agreed to be paid by DEPARTMENT to VENDOR.

Payment to VENDOR - means the mathematical product of the following: (a) Resident Defendants at non-CCFs: the VENDOR Rate calculated by the number of verified Defendants

according to the Midnight Strength Report for each day of the billing month; (b) Outpatient Defendants: the VENDOR Rate calculated by the number of verified Defendants for each hour and billing day for which Outpatient Services were rendered in the billing month.

Performance Measures - means the standards whereby VENDOR and DEPARTMENT will determine the effectiveness of the Services, as set forth in Article I hereto.

Person - means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, court or other tribunal, or government or any agency or political subdivision thereof.

Program Budget - means the financial management system of proposed revenue and expenditures that VENDOR submitted in response to the ITB or RFP, if applicable (as same may have been amended prior to the execution hereof), whereby VENDOR implements and maintains its books regarding income and expenditures in the provision of Services at the Facility in accordance with the approved Program Budget (i.e., a program-specific accounting or bookkeeping system).

Resident - means any Defendant who resides at the Facility and receives Services pursuant to the terms hereof.

RFP - means that certain Request for Proposal issued by DEPARTMENT for the purpose of soliciting proposals to render Services and with respect to which VENDOR responded and was awarded this AGREEMENT, if applicable.

Services - means the delivery by VENDOR of the chemical dependency program as set forth in this AGREEMENT and exhibits and as outlined in VENDOR'S response to the ITB or RFP, if applicable.

Term - means the duration of this AGREEMENT as specified in Article I.

VENDOR - means "Name of provider."

Vendor Rate - means the amount paid by Department to VENDOR per day or per hour during the term hereof, determined in accordance with the rates set forth in Article I.

- 1.19 Other: **The Vendor shall submit the billing statement to the CSCD, P.O. Box 2528 McAllen, Texas 78502, only after the service has been rendered. The Vendor shall ensure that the billing statement be received by the 10th day of each month.**
The Vendor shall treat the client's record as confidential in accordance with federal regulations and state laws. The Vendor shall release information as indicated in the Release of Confidential Information. This form is required in order to effect the necessary exchange of information between the department and the Vendor (Exhibit D).
The Vendor shall adopt and implement workplace guidelines concerning persons with AIDS and HIV infection and shall also develop and implement guidelines regarding confidentiality of AIDS and HIV related medical information for employees of said Vendor and for clients, inmates, patients and residents served by the Vendor in accordance with the provisions found in Acts 1989, 71st Leg., Ch. 1195, Section 5.03 and Section 5.04.

ARTICLE II REPRESENTATIONS AND WARRANTIES

VENDOR represents and warrants to and for the benefit of DEPARTMENT with the intent that DEPARTMENT rely thereon for the purposes hereof, the following:

2.1 Legal Status. VENDOR (1) is a validly organized and constituted sole proprietorship or partnership in the jurisdiction in which it is formed and in good standing therein; or, is a corporation duly incorporated and validly existing under the laws of the jurisdiction in which it is incorporated and in good standing therein; (2) is duly qualified to conduct business in the State of Texas; and (3) has legal power and authority to own or lease its properties and conduct its business as presently conducted.

2.2 Authorization. The making and performance of this AGREEMENT have been duly authorized by all necessary action and will not violate any provision of current law or VENDOR'S charter or by-laws. The AGREEMENT has been duly executed and delivered by VENDOR and, assuming due execution and delivery by DEPARTMENT, constitutes a legal, valid, and binding AGREEMENT enforceable against VENDOR in accordance with its terms.

2.3 Taxes. VENDOR has filed all necessary federal, state, and foreign income and franchise tax returns and has paid all taxes as shown to be due thereon, including penalties and interest, or provided adequate reserves for payment thereof, except to the extent that same have become due and payable but are not yet delinquent, and except for any taxes and assessments of which the amount applicability or validity is currently being contested in good faith by appropriate proceedings.

2.4 No Child Support Owing. In accordance with 231.006 of the Texas Family Code, no person who is the sole proprietor, a partner, a shareholder, or an owner of twenty-five percent (25%) or more of VENDOR and who is now more than thirty (30) days delinquent in paying court ordered approved child support may receive payment from state funds under a contract. Under Section 231.006, Family Code, VENDOR certifies that it is not ineligible to receive the Payments and acknowledges that this AGREEMENT may be terminated and Payments may be withheld if this certification is inaccurate.

2.5 Use of Payments. No part of the Payments made to VENDOR will be expended for any consultant fees, honorariums, or any other compensation to any employee of DEPARTMENT or for unallowable costs set forth on Exhibit A. VENDOR shall expend Payments made hereunder solely for providing direct services and for reasonable and allowable expenses directly related to the provision of Services.

2.6 Non-Discrimination. In the performance hereof, VENDOR warrants that it shall not discriminate against any employee, subcontractor, or Defendant on account of race, color, handicap, religion, sex, national origin, age, or those who have or are perceived to have a handicap because of AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. VENDOR shall include the provisions of this paragraph regarding non-discrimination in each of its contracts with subcontractors so that such provisions will be binding upon each subcontractor.

2.7 Non-Collusion. VENDOR warrants that no Person, other than a bona fide employee, has been employed to solicit or secure this AGREEMENT with DEPARTMENT, and VENDOR has not paid or agreed to pay any Person, other than a bona fide employee, any fee, commission, percentage, or brokerage fee, gift, or any other consideration, contingent upon or resulting from the execution hereof. For breach or violation of this provision, DEPARTMENT shall have the right to terminate this AGREEMENT without liability, or at its discretion to deduct from Payments, or otherwise recover, the full amount of such fee, commission, brokerage fee, gift, or contingency fee.

ARTICLE III GENERAL CONDITIONS

- 3.1 Health and Safety. VENDOR shall ensure that adequate measures are taken to protect the health and safety of each Defendant while receiving Services.
- 3.2 Staff Training. VENDOR shall ensure that all staff providing direct Services receive continuing education and training as needed or required and that such education and training is documented.
- 3.3 Duties and Obligations. VENDOR shall provide the Services at the Facility(ies) in compliance with applicable federal and state law, including all constitutional, legal and court ordered requirements, whether now in effect or hereafter effected or implemented, and in accordance with the Operational Plan, if required. The Operational Plan shall contain procedures for assumption of Services by DEPARTMENT in the event of VENDOR'S bankruptcy or inability to perform its duties hereunder.
- 3.4 Visitation by State Employees. VENDOR shall at all times allow employees/agents of the Governor, members of the Legislature and all other members of the Executive and Judicial branches of the State of Texas, the Contract Monitor, and any other persons designated by the DEPARTMENT and/or the Texas Board of Criminal Justice to monitor the delivery of Services and contract compliance of the VENDOR.
- 3.5 No Subcontractors. No subcontractor may be utilized by VENDOR unless DEPARTMENT has furnished prior written approval.
- 3.6 Placement of Defendants. DEPARTMENT shall have sole authority to assign and transfer Defendants to and from the facility or program and, as appropriate, may specify services for any such Defendants during the term of this agreement.
- 3.7 Confidentiality. When applicable, records of identity, diagnosis, prognosis, or treatment of any Defendant through this AGREEMENT shall be confidential and may be disclosed only in accordance with applicable laws. No information may be released without the Defendant's written consent as documented by a signed information release form. VENDOR shall notify department in writing if any legal process requires disclosure of a Defendant's record and shall obtain written acknowledgment of same from DEPARTMENT'S Authorized Representative.
- 3.8 Termination at Will. Either party may terminate this AGREEMENT for any reason whatsoever, without cause and at any time, by furnishing to the other party thirty (30) days prior written notice. DEPARTMENT'S only obligation for terminating this AGREEMENT pursuant to this section shall be the payment to VENDOR of Payments earned hereunder up to the date of termination. VENDOR's only obligation for terminating this AGREEMENT pursuant to this section shall be to provide Services until the date of termination. Neither VENDOR nor DEPARTMENT shall thereafter be entitled to any other compensation.
- 3.9 Record Retention. All records shall be the property of DEPARTMENT. All records (electronic or paper) pertinent to the provisions of Services hereunder shall be retained by the VENDOR for a period of five years with the following qualification: If any audit, litigation or claim is started before the expiration of the five-year period, the records shall be retained until all audits, litigation, claims, or other findings involving the records have been resolved. The retention period for all records begins after DEPARTMENT has made the final Payment in accordance with this AGREEMENT. At the end of the five-year period, VENDOR will request disposition instructions from DEPARTMENT.

**ARTICLE IV
ADMINISTRATION AND FISCAL SYSTEM**

- 4.1 Administrative Controls. VENDOR shall establish, document and maintain adequate administrative, financial, and internal controls to ensure that only allowable and reasonable costs are expended under this AGREEMENT.
- 4.2 Governing Board Responsibility. The appropriate governing board or entity of VENDOR shall bear full responsibility for the integrity of the Program Budget, where required, including accountability for all Payments, compliance with DEPARTMENT policies, and applicable federal and state laws and regulations. Ignorance of any AGREEMENT provisions or other requirements contained herein shall not constitute a defense or basis for waiving or appealing such provisions or requirements.
- 4.3 Conflict of Interest. VENDOR shall not refer defendants for additional services without prior written approval of the DEPARTMENT. VENDOR shall develop and implement written internal policies that may be reviewed by the DEPARTMENT to ensure that members of the governing board, contractual personnel, consultants, volunteers, and employees do not use their positions with the VENDOR for a purpose that is, or gives the appearance of being, motivated by a desire for personal gain or gain by a family member.
- 4.4 Remuneration. Staff of VENDOR shall not pay or receive any commission, consideration, or benefit or any kind related to the referral of a Defendant for treatment or engage in fee-splitting with other professionals.
- 4.5 Audits. VENDOR agrees to furnish DEPARTMENT and/or TDCJ with such information as may be required relating to the Services rendered hereunder. VENDOR shall permit DEPARTMENT to audit and inspect records and reports and to evaluate the performance of Services at any time. VENDOR shall provide reasonable access to all the records, books, reports, and other necessary data and information needed to accomplish review of program activities, services, and expenditures, including cooperation with DEPARTMENT in its performance of random or routine audits to determine the accuracy of VENDOR reports.
- 4.6 Independent Audit. VENDORS whose total funding from DEPARTMENTS (CSCDs) statewide exceeds \$100,000 must provide an independent audit on the funds received for each fiscal year (September 1 – August 31). These audits must be submitted to TDCJ-CJAD by December 31 following the end of the fiscal year.
- 4.7 Disclosure. VENDOR is required to immediately or timely, as the case may be, disclose to DEPARTMENT and TDCJ-CJAD the following:
- (a) If any Person who is an employee or director of VENDOR is required to register as a lobbyist under Texas Government Code Chapter 305, at any time during the term hereof, VENDOR shall provide to DEPARTMENT and TDCJ-CJAD timely copies of all reports filed with the Texas Ethics Commission as required by Chapter 305;
 - (b) If any Person who is an employee, subcontractor, or director of VENDOR is or becomes an elected official (i.e., an elected or appointed state official or member of the judiciary, or a United States congressman or senator), during the term hereof;
 - (c) Report any actions or citations by federal, state, or local governmental agencies that may affect VENDOR'S licensure status or its ability to provide Services hereunder.

- 4.8 Withhold Payments. The DEPARTMENT may withhold Payments for any ineligible claims including inadequate or untimely monthly invoices until such time as the ineligible, inadequate or untimely claim is resubmitted and/or corrected by VENDOR. VENDOR agrees to return any unearned amounts paid by the DEPARTMENT within thirty (30) days following the final date of the contact period, or at the DEPARTMENT'S option, within thirty (30) days following the DEPARTMENT'S delivery to VENDOR a notice that amounts paid are to be returned to DEPARTMENT.
- 4.9 Accounting Records. VENDOR agrees to maintain a separate accounting or bookkeeping system specifically isolating the revenue and expenditures associated with this AGREEMENT in accordance with fund accounting principles.
- 4.10 Payments to VENDOR. VENDOR shall submit Monthly Invoices (in writing or electronically) as required herein and shall receive Payments from DEPARTMENT based thereon, subject to the provisions in this AGREEMENT. VENDOR will provide an itemized list of Services performed during the invoice period, including the names of all Defendants served, the service provided, and the amount of time rendered with each. DEPARTMENT agrees to pay VENDOR within thirty (30) days after receipt of the Monthly Invoice (Exhibit B).
- 4.11 Discharges for Defendant Absence. Defendants on furlough or authorized absence from a residential facility, where an applicable provision of service, in excess of forty-eight (48) hours will be terminated and readmitted upon their return.
- 4.12 Residential Services Billed According to Midnight Strength Rule: Non-Community Corrections Facility (CCF) VENDORS providing residential services shall charge the DEPARTMENT for clients according to the Midnight Strength Report.
- 4.13 Peer or Group-Controlled meetings. The VENDOR shall not, under any circumstances, bill the DEPARTMENT for peer or group-controlled meetings and such meetings shall not be counted toward the minimum treatment/counseling session requirements set forth herein.
- 4.14 Specific Measures. All terms of this AGREEMENT are subject to monitoring and verification; however, the VENDOR must have available for the DEPARTMENT'S inspection records to support performance of those measures outlined in Article I herein.
- 4.15 Equipment. Title to any equipment purchased in excess of \$1,000.00 per unit cost (e.g., keyboard, monitor, and CPU are one unit) will vest with the Texas Department of Criminal Justice if such equipment is purported to be a direct expense to the program per submitted vendor budget if applicable. Items in excess of \$1,000 per unit that are depreciated (useful life) or placed in a use allowance will not be considered for ownership by TDCJ.
- 4.16 Misspent Funds. The VENDOR will refund expenditures of the VENDOR that are contrary to this AGREEMENT and deemed inappropriate by the DEPARTMENT or designee.
- 4.17 Other Revenues for Additional Services. VENDOR may collect additional revenues from other sources only for services exceeding those requirements in Article I and Exhibit A.
- 4.18 Other Revenue for Proposed Services. The prices quoted in this AGREEMENT are the full cost of treatment or service provision. Any fees, food stamps, or other revenues collected on behalf of the Defendant for client services provided for in this AGREEMENT must be used to reduce cost per unit of service per Defendant under this AGREEMENT.

**ARTICLE V
DEFAULT AND TERMINATION**

5.1 Default by VENDOR. Each of the following shall constitute an Event of Default on the part of VENDOR:

- a. A material failure to keep, observe, perform, meet, or comply with any covenant, term, or provision hereof, which failure continues for a period of twenty (20) days after receipt of VENDOR of written notification thereof;
- b. (1) Admit in writing its inability to pay its debts; (2) make a general assignment for the benefit of creditors; (3) suffer a decree or order appointing a receiver or trustee for it or substantially all of its property, and, if entered without its consent, same is not stayed or discharged within sixty (60) days of such decree or order, (4) suffer filing under any law relating to bankruptcy, insolvency, or the reorganization for relief of debtors by or against it and, if contested by it, not to be dismissed or stayed within sixty (60) days of such filing; or (5) suffer any judgment, writ of attachment or execution, or any similar process issued or levied against a substantial part of its property that is not released, stayed, bonded, or vacated within sixty (60) days after such issuance or levy; and
- c. The discovery by DEPARTMENT that any statement, representation of warranty in this AGREEMENT is false, misleading, or erroneous in any material respect.

5.2 Remedy of DEPARTMENT. Upon the occurrence of an Event of Default by VENDOR, DEPARTMENT shall notify VENDOR of such Event of Default, and subject to the time provisions of Section 5.1 hereof, DEPARTMENT shall have the right to pursue any remedy it may have at law or in equity, including, but not limited to, (a) suspend referral of Defendants; (b) suspend payment; (c) taking action to cure the Event of Default, in which case DEPARTMENT may offset against any Payments owed to VENDOR all reasonable costs incurred by DEPARTMENT in connection with its efforts to cure such Event of Default; and (d) termination and removal of VENDOR as provider of Services. In the event of VENDOR'S removal due to an Event of Default, DEPARTMENT shall have no further obligations to VENDOR after such removal and in such event, VENDOR agrees to cooperate with DEPARTMENT regarding a transition to new provider of Services.

5.3 Default by DEPARTMENT. The following shall constitute an Event of Default on the part of DEPARTMENT: failure by DEPARTMENT to pay within thirty (30) days after Payment is due any Payment required to be paid pursuant to the terms hereof, provided such failure to pay shall not constitute an Event of Default if the Comptroller of the State of Texas has withheld any payments pursuant to statutory authority.

5.4 Remedy of VENDOR. Upon an Event of Default by DEPARTMENT, VENDOR'S sole remedy shall be to terminate this AGREEMENT. Upon such termination, VENDOR shall be entitled to receive Payment from DEPARTMENT for all Services satisfactorily furnished hereunder up to and including the date of termination.

5.5 AGREEMENT Subject to Availability of Funds. This AGREEMENT will be subject to the availability of funds as appropriated by the State Legislature and as made available by the Community Justice Assistance Division of the Texas Department of Criminal Justice. If such funds become reduced or unavailable, this AGREEMENT shall be subject to immediate modification, reduction or termination.

**ARTICLE VI
INSURANCE AND INDEMNIFICATION**

6.1 Insurance. VENDOR shall provide an adequate plan of insurance that provides: (1) coverage to protect DEPARTMENT and the State against all claims, including claims based on violations of civil rights arising from the Services performed by VENDOR; (2) coverage to protect the State from actions by a third party against VENDOR or any subcontractor of VENDOR; and (3) coverage to protect the State from actions by officers, employees, or agents of VENDOR or any subcontractor(s). VENDOR shall maintain the following insurance coverage in full force and effect for the mutual protection and benefit of DEPARTMENT, the State and VENDOR with the amounts and coverages as required by law, in accordance with the following:

- A. Claims that may arise out of or result from VENDOR'S actions/operations hereunder, whether such actions/operations are by VENDOR or by a subcontractor of VENDOR, or by anyone directly or indirectly employed by or acting on behalf of VENDOR or a subcontractor where liability may arise for:
1. Claims under workers compensation disability benefits, and other similar employee benefit actions;
 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of any VENDOR employees;
 3. Claims for damages because of bodily injury, sickness or disease or death of any Person other than VENDOR'S employees;
 4. Claims for damages insured by usual personal liability coverage that are sustained by (a) any Person as a result of an act directly or indirectly related to the employment of such Person by VENDOR, or by (b) any other Person;
 5. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom;
 6. Claims for damages based on violations of civil rights;
 7. Claims for damages arising from fire and lightning and other casualties.
- B. VENDOR shall obtain and maintain in force insurance coverage in accordance with all applicable law and accepted industry standards during the term they are engaged hereunder. In addition, VENDOR shall maintain a liability insurance policy in an amount not less than \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.
- C. Certifications/policies of insurance shall be filed with DEPARTMENT prior to execution of this AGREEMENT. VENDOR shall notify DEPARTMENT within fifteen (15) days of cancellation of any policy required herein.
- D. Compliance with the foregoing insurance requirements shall not relieve VENDOR from any liability under the indemnity provisions.

6.2 Indemnification. VENDOR shall indemnify and save the DEPARTMENT, the Texas Board of Criminal Justice, the Texas Department of Criminal Justice, the State of Texas, and its officers, agents and employees (hereinafter, collectively referred to as the "State") harmless from and against any and all claims arising from the conduct, management or performance hereof, including, without limitation, any and all claims arising from any condition herein or arising from any breach or default on the part of VENDOR in the performance of any covenant or agreement on its part to be performed, or arising from any act of negligence of VENDOR, or licensees or arising from any accident, injury or damage whatsoever caused to any person, firm or corporation and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in or about any such claim, action or proceeding brought against the State by reason of any such claim. In any such action brought against the State, VENDOR, upon notice from the State, shall defend against such action or proceeding by counsel satisfactory to the State, unless such action or proceeding is defended against by counsel for any carrier of liability insurance provided for herein. The aforementioned indemnification shall not be affected by a claim that negligence of DEPARTMENT, the State, or their respective agents, contractors, employees or licensees contributed in part to the loss or damage indemnified against.

ARTICLE VII INDEPENDENT CONTRACTOR

VENDOR is associated with DEPARTMENT only for the purposes and to the extent set forth herein, and with respect to the performance of Services hereunder, VENDOR is and shall be an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for DEPARTMENT whatsoever with respect to the indebtedness, liabilities, and obligations of VENDOR or any other party. VENDOR shall be solely responsible for (and DEPARTMENT shall have no obligation with respect to) payment of all Federal Income, F.I.C.A., and other taxes owed or claimed to be owed by VENDOR, arising out of VENDOR's association with DEPARTMENT pursuant hereto, and VENDOR shall indemnify and hold DEPARTMENT harmless from and against any and all liability from all losses, damages, claims, costs, penalties, liabilities, and expenses howsoever arising or incurred because of, incident to, or otherwise with respect to any such taxes.

ARTICLE VIII MISCELLANEOUS PROVISIONS

8.1 Inconsistencies. Where there exists any inconsistency between this AGREEMENT and other provisions of collateral contractual Agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.

8.2 Severability. Each paragraph and provision hereof is severable from the entire AGREEMENT and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

8.3 Prohibition Against Assignment. There shall be no assignment or transfer of this AGREEMENT without the prior written consent of both parties.

8.4 Law of Texas. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Texas and shall be enforced in the county of the applicable judicial district in which this agreement was entered.

8.5 Notices. All notices called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or forty-eight (48) hours after mailed to each party by certified mail, return receipt requested, postage prepaid.

8.6 Entire. This AGREEMENT incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written AGREEMENT. No other prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless attached hereto and/or embodied herein.

8.7 Amendment. No changes to this AGREEMENT shall be made except upon written agreement of both parties.

8.8 Headings. The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.

8.9 Counterparts. This AGREEMENT may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

8.10 Terminology and Definitions. All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT including the Exhibits attached hereto and incorporated herein by reference to be executed as of the date first above written.

Executed in Hidalgo County, Texas by

DEPARTMENT: Hidalgo County
COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT

BY: Joe Lopez

SIGNATURE: 

TITLE: Executive Director

DATE: 11/1/06

VENDOR: Jerry Amaya License#003605-038272

BY: 

TITLE: _____

DATE: 11/1/06

EXHIBIT A

Unallowable Costs

Any item unallowable by State or any authorized agency, statute, policy, or procedure including, but not limited to, federal guidelines for operation of for-profit and not-for-profit entities;

Alcoholic beverages;

Bad debts;

Building and Land purchase, rental purchase, lease purchase, renovation;

Cash payments to intended recipients of Services;

Equipment items exceeding \$1,000 (CPU, Monitor and Keyboard are one unit) counted as a direct expense toward the program. Such items may be charged to the program only through an approved depreciation methodology.

Expenses or reimbursements to or on behalf of vendor-related entities for allowable indirect costs;

Expenses or costs reimbursed to vendor by other funds with respect to amounts paid by the CSCD for vendor services;

Fines and Penalties;

Firearm, Firearm Components, and Ammunition;

Fundraising; Marketing; and Advertising (advertising is allowable for personnel vacancies and procurement of goods and services only);

Legislative expenses for payment to any elected official from funds received from the CSCD;

Lobbying;

Payments to or on behalf of individuals related to principals of any vendor-affiliated organization(s) or to their employees, unless as allowable indirect costs or unless specific approval is received from the CSCD; and

Tobacco Products.