

**C-11-141-09-20**

**SUBSTANCE ABUSE TREATMENT AND  
PRIMARY CARE SERVICES FOR ADOLESCENTS**

**OPERATIONS AGREEMENT**

This Operations Agreement is made and entered into by and between Hidalgo County, Texas (“Hidalgo County”) acting by and through the Hidalgo County Health and Human Services (“DEPARTMENT”), and Serving Children and Adolescents in Need, Inc., a Texas Non-profit corporation, (“VENDOR”);

Whereas, Hidalgo County recognizes a need for adolescent alcohol, substance abuse, counseling and treatment including primary care for adolescent/residents of Hidalgo County while undergoing such treatment;

Whereas, in accordance with Chapter 465 of the Health and Safety Code, Hidalgo County has created a commission composed of the Hidalgo County Health and Human Services Department to: (1) educate the public on adolescent drug and alcohol abuse; (2) promote adolescent drug and alcohol education at all levels of the schools; (3) study the effectiveness of efforts, including the Commission’s efforts, in reducing drug and alcohol abuse, and (4) provide for the creation and administration of a program to counsel or treat drug and alcohol abusers or to provide both counseling and treatment;

Whereas VENDOR, is versed in administering a program for counseling and treating adolescent drug and alcohol abusers and responded to the Request for Qualifications issued by Hidalgo County for: “Substance Abuse Treatment and Primary Care Services for Adolescents”; and submitted a SOQ (statement of qualifications) including an operational plan (“Operational Plan”)to provide counseling and treatment including primary care for adolescents in accordance with the request for qualifications requirements, such RFQ and SOQ, including the Operational Plan, being attached hereto as Exhibits “A” and “B” respectively, and incorporated herein for all purposes; and

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:

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

1.1 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 attached hereto.

Contract Monitor – Department will be the primary contact source on this Agreement with the VENDOR. The VENDOR must provide a monthly service report and make themselves available to attend Hidalgo County Commissioners Court on a quarterly basis to provide reports as required herein.

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

Client - means each individual who is a resident of Hidalgo County and who receives Services from VENDOR hereunder.

Facility - VENDOR will provide Services pursuant to the terms hereof primarily at the Facility. The VENDOR must maintain and will be held accountable for any and all requirements to operate said program/facility in accordance with Texas DSHS Rules and Guidelines.

Licensure Rules – means the terms and provisions contained in the Texas DSHS Licensure Compliance Guide.

Monthly Program Report – The VENDOR will provide a monthly report on Services provided within the County Facility in order to establish an equivalent value for Facility versus services including the Performance Measures to track and evaluate achievement results of Clients, which plan shall contain a mechanism for monthly self-monitoring reports by VENDOR.

Operational Plan – means the plan attached as Exhibit B hereto.

Outpatient - means any adolescent resident of Hidalgo County who receives Services on an hourly basis pursuant to the terms hereof.

Payment or Payments - DEPARTMENT is not responsible for making any payments to VENDOR.

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.

Services - means the delivery by VENDOR of the drug and alcohol abuse, education, counseling and treatment chemical dependency program as set forth in this AGREEMENT and exhibits and as outlined in VENDOR'S response to the RFQ attached as Exhibit B.

TDSHS – means the Texas Department of State Health Services, as presently or hereafter constituted.

Term - means the duration of this AGREEMENT as specified in Article 1.3.

## 1.2 **APPOINTMENT OF VENDOR; TERM**

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

1.3 Term. This Agreement is effective on September 20, 2011 and shall continue until September 19, 2012, 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 two (2), one (1) year periods 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. Hidalgo County has the option to extend this Agreement for a sixty (60) day grace period at the end of the contract for unforeseen delays on subsequent contract procurement under the same rates, terms and conditions.

1.4 Substance Abuse Treatment Services Minimum Requirements: The VENDOR shall, in accordance with the terms of this Agreement, provide all necessary personnel, equipment, materials, supplies 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 substance abuse treatment services listed as follows:

- a) VENDOR will be responsible to obtain and maintain any or all State/Federal licenses, certifications and or permits required to operate an outpatient primary care and substance abuse treatment facility.
- b) VENDOR represents and warrants that VENDOR maintains all required and appropriate licenses all staff maintains their proper licenses and insurances.

- c) VENDOR must adhere to any and all other contracts, agreements and/or partnerships with any other Hidalgo County agency or outside entity beyond this Agreement. Hidalgo County is not responsible or accountable for the outcomes or lack of outcomes of said VENDOR agreements.
- d) VENDOR will take possession of the Department's facility and will be held responsible and accountable to repair, replace and maintain the Facility in its present condition, ordinary wear and tear expected.

1.5 Consideration: VENDOR agrees to deliver the Services in accordance with the terms and provisions of this Agreement.

1.6 Operational Plan shall ensure the following:

- a. The level of services to be provided includes primary care and outpatient substance abuse treatment and counseling services to adolescent residents of Hidalgo County;
- b. The programs and activities are designed to reduce the impact of adolescents abuse and addiction;
- c. The program is designed to engage primary health care to assist the treatment of substance abuse and addiction to children within Hidalgo County;
- d. VENDOR shall provide testimony, affidavits and documents for any court proceedings and trials related to its treatment and other services regarding any Clients or Clients families; and
- e. VENDOR shall provide and promote adolescent drug and alcohol education at all levels of schools in Hidalgo County.

1.7 Screening: Written policies and procedures shall ensure the following:

- a) Screening must be conducted by a Licensed Counselor or person otherwise qualified or exempt under TDSHS licensure rules.

1.8 Performance Measures. The VENDOR shall comply with the Performance Measures included in this AGREEMENT to assist Clients to change their behavior and become productive, contributing members of society by leading a life free of substance abuse. Performance Measures, (which may be amended or revised by the Department during the term of this Agreement), along with applicable adjustments, for substance abuse services are as follows:

**A. OUTPUTS:**

- 1. Total number of Clients served;
- 2. Total number of counseling hours provided;
- 3. Total number of class hours provided;
- 4. Total number of family counseling hours provided; and
- 5. Total number of hours performed in drug and alcohol abuse education conducted by VENDOR.

**B. OUTCOMES:**

- 1. Include immediate and long-term outcomes that are specific to the program/services as set forth in the statements of qualifications/proposal.
- 2. Total number of successful program completions;
- 3. Reduction of drug or alcohol use by Clients; and
- 4. Positive reports from schools as to the drug and alcohol abuse education.

1.9 Negotiation. VENDOR will document performance measures and evaluation criteria. DEPARTMENT can negotiate with the VENDOR during the term of the AGREEMENT to establish new performance measures or evaluation criteria that both parties agree reflect quantity or quality of service.

1.10 Diagnosis. In its treatment of Clients, VENDOR shall:

- a) Provide appropriate chemical dependency treatment as designated by a documented Axis 3/Medical diagnosis substance abuse or substance dependency diagnosis recommending the specific treatment being provided by the VENDOR;

b) VENDOR is responsible to identify needs of Clients 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 Clients with dual diagnosis and/or mental and physical disabilities to include primary care needs within the scope of the Client's clinical needs.

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

a) Document on a weekly basis the Client's level of participation and compliance with treatment goals and objectives; and

b) VENDOR must maintain a signature log of all face-to-face contacts with each Client. The log must contain what service was performed, the time and date of such contact and be signed by the counselor and the Client.

1.12 Discharge. The discharge of any Client shall be made in accordance with the appropriate discharge plan, medical plan and any additional instructions in assisting with the success of the Client upon discharge and will be forwarded to the appropriate referring parties or agencies, if applicable.

1.13 Referrals. VENDOR is responsible for any and all additional referrals for treatment services upon discharge which would aid in the Clients and families recovery success. Assurances must be made that any such referral made is to appropriate licensed and/or certified substance abuse treatment programs.

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

1.15 Policies and Procedures. VENDOR will have a complete set of policies and procedures which provide the necessary clinical and programmatic guidelines and make them available to the DEPARTMENT upon request when needed. The VENDOR will develop an agreed upon procedure with the Department in reporting any type of incident or accident within the Facility.

1.16 Orientation and HIV Counseling. VENDOR shall provide orientation to Clients regarding substance abuse treatment and support resources and shall provide HIV counseling in accordance with the provisions of Exhibit D hereto.

1.17 DEPARTMENT Coordination and Approvals: VENDOR will be responsible to seek any approvals required for additional treatment or transition of treatment by the appropriate referring agency, if applicable. DEPARTMENT will not be accountable for any treatment decisions or any treatment referrals made by VENDOR.

1.18 Cost of Services. Neither Hidalgo County, DEPARTMENT or any other county entity will be held accountable for any of the costs incurred for providing any of the Services hereunder. VENDOR will be fully accountable for all billing/collections and verification of benefits from the Clients.

1.19 Requirements in the event of a Declared Emergency:

In the event of a man-made or natural emergency event as designated by Hidalgo County Judge and/or the Texas Department of Emergency Management (TDEM) (i.e. hurricanes, wildfires, bioterrorism, etc.), Hidalgo County has the right to utilize the Facility for no more than ten (10) working days or fourteen (14) calendar days as an emergency response operations facility as designated by the Hidalgo County Judge.

1.20 Encouragement of Academic Partnerships:

VENDOR is highly encouraged to partner with the various accredited institutions of higher education located in Hidalgo County, Texas to obtain and provide training and internship opportunities in the clinical areas in which it is clinically appropriate, in accordance with the TDSHS rules and guidelines.

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES**

VENDOR represents and warrants to and for the benefit of DEPARTMENT with the intent that DEPARTMENT may 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; if applicable, 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 Owning. 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 any such payments and acknowledges that this Agreement may be terminated if this certification is inaccurate.

2.5 Non-Discrimination. In the performance hereof, VENDOR warrants that it shall not discriminate against any employee, subcontractor, or Client 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.

2.6 Non-Collusion. VENDOR warrants that no Person, other than a bona fide employee, has been employed to solicit or secure this AGREEMENT with Hidalgo County or 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, Hidalgo County and/or 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 Safety Requirements. DEPARTMENT shall maintain the physical plant of the Facility in compliance with all applicable local codes. VENDOR shall maintain the Facility in compliance with TDSHS Licensure Rules as applicable.

3.2 Health and Safety. VENDOR shall ensure that adequate measures are taken to protect the health and safety of each Client while receiving Services.

3.3 Staff Training. VENDOR shall ensure that all staff providing direct Services receive continuing education and training as needed or required by laws or applicable regulations and that such education and training is documented.

3.4 Duties and Obligations. VENDOR shall provide the Services at the Facility 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, In the event that the VENDOR can no longer provide Services in adherence to State/Federal guidelines or in accordance with the Operational Plan, Hidalgo County, Department or its representative may terminate this Agreement upon thirty (30) days written notice.

3.5 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 to monitor the delivery of Services and contract compliance of the VENDOR.

3.6 No Subcontractors. No subcontractor may be utilized by VENDOR unless DEPARTMENT has furnished prior written approval.

3.7 Confidentiality. When applicable, records of identity, diagnosis, prognosis, or treatment of any Client through this Agreement shall be confidential and may be disclosed only in accordance with applicable laws. No information may be released except in accordance with Article IX hereof by a signed information release form. VENDOR shall notify DEPARTMENT in writing if any legal process requires disclosure of a Client's record and shall obtain written acknowledgment of same. Neither the Department or Hidalgo County will be responsible or accountable for any violations of confidentiality.

3.8 Termination at Will. Hidalgo County or the Department may terminate this Agreement for any reason whatsoever, without cause and at any time, by furnishing to the VENDOR thirty (30) days prior written notice. VENDOR's only obligation upon termination of this Agreement pursuant to this section shall be to provide Services until the date of termination.

3.9 Record Retention. 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 will be in accordance with all State and Federal guidelines for an outpatient primary care and substance abuse facility.

**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 Operational Plan, where required, including accountability for all expenses, compliance with DEPARTMENT policies, and applicable federal and state laws and regulations. Ignorance of any provisions or other requirements of this Agreement including all exhibits attached hereto shall not constitute a defense or basis for waiving or appealing such provisions or requirements.

4.3 Conflict of Interest. VENDOR shall develop and implement written internal policies that may be reviewed by the Contract Monitor to ensure that members of the VENDOR's 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 for the referral of a Client for treatment or engage in fee-splitting with other professionals.

4.5 Audits. VENDOR agrees to furnish DEPARTMENT and/or TDSHS 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 Disclosure. VENDOR is required to immediately or timely, as the case may be, disclose to DEPARTMENT and TDSHS 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 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.

4.9 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 1.8 herein.

4.10 Equipment. DEPARTMENT will provide communication equipment, computer access and maintenance of such equipment. VENDOR will be held accountable to repair/replace any of the equipment provided by the Department if it is damaged, stolen or misused by the VENDOR and/or Clients.

## **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/or
- 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 (a) hereof, DEPARTMENT shall have the right to pursue any remedy it may have at law or in equity, including, but not limited to, (a) take action to cure the Event of Default, or (b) terminate and remove 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 Commitment of Current Revenues Only. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County and/or Department under this Agreement, County and/or Department may terminate this Agreement upon ten (10) days written notice to VENDOR. County and/or Department agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

## ARTICLE VI INSURANCE AND INDEMNIFICATION

6.1 Insurance. VENDOR shall provide an adequate plan of insurance that provides: (1) coverage to protect DEPARTMENT AND HIDALGO COUNTY, TEXAS against all claims, including claims based on violations of civil rights arising from the Services performed by VENDOR; (2) coverage to protect the DEPARTMENT AND HIDALGO COUNTY, TEXAS from actions by a third party against VENDOR or any subcontractor of VENDOR; and (3) coverage to protect the DEPARTMENT AND HIDALGO COUNTY, TEXAS from actions by officers, employees, or agents of VENDOR or any subcontractor(s) of VENDOR. VENDOR shall maintain the following insurance coverage in full force and effect for the mutual protection and benefit of DEPARTMENT and Hidalgo County, 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 and provide proof of insurance incorporated in this Agreement as Exhibit C, which will also include any subcontractor that is subcontracted by the VENDOR in at least the following limits, to be in place prior to providing any services under this Agreement and to continue at all times, naming Hidalgo County as an additional insured.
  - 1. VENDOR shall carry Professional liability insurance policy with limits of at least Five Hundred Thousand Dollars (\$500,000) per occurrence, or limited to claims made, including at least five (5) year extended reporting period;
  - 2. VENDOR shall carry Comprehensive General Liability insurance policy with limits of Five Hundred Thousand Dollars (\$500,000.00) providing additional coverage to all underlying liabilities to the COUNTY;
  - 3. VENDOR shall carry Automobile Liability insurance policy with limits of at least Three Hundred Thousand (\$300,000.00) per person and Five Hundred Thousand (\$500,000.00) per occurrence. Coverage should include injury to or death of persons and property damage claims limits up to Five Hundred Thousand (\$500,000.00) arising out of the services provided to COUNTY hereunder.
  - 4. VENDOR shall carry Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;

5. VENDOR shall carry Worker's Compensation insurance in amounts established by Texas Law, unless the VENDOR is specifically exempt from the Texas Workers Compensation Act, Texas Labor Code Chapter 401, et. seq.

C. Certifications/policies of insurance shall be filed with DEPARTMENT with a copy to the Hidalgo County Purchasing 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, HIDALGO COUNTY and its officers, agents and employees (hereinafter, collectively referred to as the "DEPARTMENT") 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 performing the Services, and any such claim, action or proceeding brought against the DEPARTMENT and/or HIDALGO COUNTY by reason of any such claim. In any such action brought against the DEPARTMENT and/or HIDALGO COUNTY, VENDOR, upon notice from the DEPARTMENT and/or HIDALGO COUNTY, shall defend against such action or proceeding by counsel satisfactory to the DEPARTMENT and HIDALGO COUNTY, 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 and/or HIDALGO COUNTY, 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 and HIDALGO COUNTY 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 and HIDALGO COUNTY whatsoever with respect to the indebtedness, liabilities, and obligations of VENDOR or any other party. VENDOR shall be solely responsible for (and DEPARTMENT and/or Hidalgo County 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 and/or Hidalgo County pursuant hereto, and VENDOR shall indemnify and hold DEPARTMENT and/or Hidalgo County 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

### VENDOR'S RESPONSIBILITIES REGARDING USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION ("PHI")

8.1. General: VENDOR agrees to

- (a) hold all Protected Health Information ("PHI") confidential except to the extent that disclosure is required by Federal or State law, including the Texas Public Information Act, Chapter 552, Texas Government Code. TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended. PHI is defined in 45 CFR § 164.501 and is limited to information created or received by VENDOR from or on behalf of DEPARTMENT or third parties;
- (b) be bound by all applicable Federal and State of Texas licensing authorities' laws, rules, and regulations regarding records and governmental records, including the Health Insurance Portability and Accountability Act of 1996, PL 104-191, the HIPAA regulations (codified at 42 CFR Parts 160 and 164), and Chapter 181, Texas Health and Safety Code, as amended, collectively referred to herein as "Privacy Requirements.";
- (c) cooperate with the Texas Medicaid Fraud Control Unit and to make appropriate personnel available for interviews, consultation, grand jury proceedings, pre-trial conference, hearings, trial, and in any other process, including investigations that are required as a result of VENDOR's Services to DEPARTMENT. Compliance with this paragraph is at VENDOR's own expense.

8.2. Representations: VENDOR represents that it is familiar with Privacy Requirements, State HIV/AIDS and mental health information, and State and Federal drug/alcohol-related health information.

8.3. Survival of Privacy Provisions: VENDOR's obligations with regard to PHI shall survive the termination of this Agreement.

8.4. Amendment Related to Privacy Requirements: The Parties agree to take such action as is necessary to amend this Agreement if Department, in its reasonable discretion, determines that amendment is necessary for Department to comply with the Privacy Requirements of HIPAA and TEX. HEALTH & SAFETY CODE ANN. §§ 181.001 *et seq.*, as amended, and any other law or regulation affecting the use or disclosure of PHI. Any ambiguity in this Agreement shall be resolved to permit Department to comply with the Privacy Requirements of HIPAA and TEX. HEALTH & SAFETY CODE ANN. §§ 181.001 *et seq.*, as amended.

8.5. Indemnification. VENDOR agrees to indemnify and hold harmless Department and/or Hidalgo County, its elected officials, officers, employees, and agents (individually and collectively "County Indemnities") against any and all losses, liabilities, judgments, penalties, awards and costs (including costs of investigation and legal fees and expenses) arising out of or related to (a) a breach of this Agreement relating to the Privacy Requirements by VENDOR, or (b) any negligent or wrongful acts or omissions of VENDOR or its employees, directors, officers, subvendors, or agents, relating to the Privacy Requirements including failure to perform their obligation under the Privacy Requirements.

8.6. Access to Books and Records of VENDOR

VENDOR agrees to allow the Comptroller General of the United States, the Department of Health and Human Services ("HHS"), the County Auditor, and their duly authorized representatives, access to contracts, books, documents, and records necessary to verify the nature and extent of the costs of the Services provided by VENDOR. VENDOR agrees to allow such access until the expiration of four (4) years after the Services are furnished under this Agreement. Such access will be provided in accordance with the regulations of the Centers for Medicare and Medicaid Service ("CMS"). VENDOR

allows similar access to books, records, and documents related to contracts between VENDOR and organizations related to or subcontracted by VENDOR, as defined by the regulations of CMS.

8.7 E-Mail Addresses

VENDOR affirmatively consents to the disclosure of its e-mail addresses that are provided to the Department including any agency or department of Hidalgo County. This consent is intended to comply with the requirements of the Texas Public Information Act, TEX. GOV'T CODE ANN. § 552.137, *et seq.*, as amended, and shall survive termination of this Agreement. This consent shall apply to e-mail addresses provided by VENDOR and agents acting on VENDOR's behalf and shall apply to any e-mail address provided in any form for any reason whether related to this Agreement or otherwise.

8.8 Any notice required or permitted to be given hereunder shall be in writing and shall be delivered personally or sent by certified mail, postage prepaid, as set forth below:

If to DEPARTMENT:                   Health and Human Services Department  
  1304 South 25<sup>th</sup>  
  Edinburg, Texas 78539

With a Copy To:                       County of Hidalgo  
  Attn: County Judge  
  1615 So. Closner, Ste. J  
  Edinburg, Texas 78539

If to VENDOR:                         Serving Children and Adolescents in Need, INC.  
  Attn: Isela S. Dabdoub  
  2347 E. Saunders, Ste. B  
  Laredo, Texas 78041

**ARTICLE IX  
MISCELLANEOUS PROVISIONS**

9.1 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.

9.2 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.

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

9.4 **LAW OF TEXAS. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND SHALL BE PERFORMABLE IN HIDALGO TEXAS.**

9.5 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 and postage prepaid.

9.6 Entire Agreement. 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.

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

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

9.9 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.

9.10 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 effective as of the day and year first written above.

HIDALGO COUNTY, TEXAS

By: \_\_\_\_\_  
Ramon Garcia, County Judge

ATTEST:

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

VENDOR: Serving Children and Adolescents in  
Need, Inc.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:  
Atlas & Hall, L.L.P.

By: \_\_\_\_\_

## **EXHIBIT “A”**

RFQ Packet 2011-141-06-15CGA

**EXHIBIT “B”**  
VENDOR’s Response/Operational Plan

**EXHIBIT “C”**

**INSURANCE**

## **EXHIBIT D**

### HIV Standards

## **EXHIBIT D**

### **HIV Standards**

A. HIV Counseling and Education. VENDOR shall: 1) provide information to staff and Clients including basic substance abuse/HIV information about risk factors, risk reduction strategies, routes of transmission, and HIV antibody counseling and testing; 2) provide risk assessments on all Clients entering treatment; and 3) have a documented procedure in place for making available, at the Defendant's request, pretest and post test counseling and anonymous HIV testings. VENDOR shall not carry out any testing for the etiologic agent for Acquired Immunodeficiency Syndrome (AIDS) unless such testing is accompanied by appropriate pretest, counseling and appropriate post test counseling. VENDOR will obtain the Client's voluntary consent prior to conducting an HIV test.

B. HIV Workplace Guidelines. In accordance with Subtitle D. Title 2, Health and Safety Code, Chapter 85, Section 85.113, VENDOR shall adopt and implement workplace guidelines concerning Persons with AIDS and HIV infection. VENDOR's guidelines shall be consistent with guidelines published by the Texas Department of Health and all other applicable regulations, policies and procedures.

C. HIV Confidentially Guidelines. In accordance with Subtitle D. Title 2, Health and Safety Code, Chapter 85, Section 85.115, VENDOR shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of the entity and for Clients, including Residents served by the entity. VENDOR's guidelines must be consistent with guidelines published by the Texas Department of Health and with state and federal laws and regulations. If VENDOR does not adopt confidentiality guidelines as required by this paragraph, VENDOR is not eligible to receive payment through this AGREEMENT until the guidelines are developed and implemented.