

PROFESSIONAL SERVICES CONTRACT
BETWEEN HAYS COUNTY AND
NEIGHBORHOOD DEFENDER SERVICE, INC.
NOVEMBER 22, 2022 – SEPTEMBER 30, 2027

THIS CONTRACT (a/k/a Agreement) is between Hays County, and Neighborhood Defender Service, Inc., a not-for-profit corporation with a principal place of business in New York, New York (Contractor).

1. PURPOSE

1.01 On or about May 24, 2022, the County, after soliciting proposals in compliance with Chapter 26 the Texas Code of Criminal Procedure, selected Contractor's proposal and authorized negotiation of this Agreement.

1.02 The County agrees to pay Contractor on a monthly basis for indigent legal defense services on criminal cases arising in Hays County as outlined in the Scope of Services, Appendix A.

1.03 Contractor is experienced and able to perform technical and professional services.

2. ENGAGEMENT OF CONTRACTOR

2.01 The County engages the Contractor and the Contractor agrees to faithfully and diligently perform the services according to the terms and conditions contained in this Contract, including the Scope of Services (Appendix A) consistent with the standard of practice in the community and best possible representation of clients, as set forth in the RFP. This Contract is made pursuant to the County's RFP for a Public Defender Office (RFP # 2022-P04) and all of Contractor's responses to the RFP and subsequent questions (Appendix C). The Parties may refer to the RFP and Contractor's responses to the RFP to provide information regarding the intent of the Parties. However, the Parties concur that this Agreement contains all terms and conditions necessary for performance of the services contemplated in the RFP and Contractor's response.

3. SCOPE OF SERVICE

3.01 The Contractor must perform the services described in Appendix A in a satisfactory manner. Contractor desires to and will provide these services for the County's indigent defense needs in accordance with the standards adopted by the Texas Indigent Defense Commission (TIDC), and the terms of this Agreement. The Contractor warrants that the Contractor is authorized to do business under the laws of the State of Texas and is qualified to perform the services in this Agreement.

3.02 Each of NDS, Inc.'s LLC's will be equally represented on the NDS, Inc. National Board. Such representation shall consist of three (3) members from each of NDS, Inc.'s LLC's, including three members who represent the LLC created under Delaware law ("NDS Texas"). NDS Texas will additionally be governed by a 6-person in-state Advisory Board, whose members will have demonstrated a commitment to providing effective representation in indigent public defense.

The services include all conferences and consultation deemed necessary by the County to properly and fully perform the services, including attendance and presentation at County Commissioners Court meetings, if needed.

4. TERM OF CONTRACT

4.01 This Contract begins on November 22, 2022 and ends September 30, 2027. The Contractor must expediently perform the services to achieve the objectives of this Contract. Upon written agreement, the parties may renew this contract for an additional five year term.

5. DATA TO BE FURNISHED CONTRACTOR

5.01 Upon the request of the Contractor, without charge, the County must furnish copies of all information, data, reports, records, etc., that the County thinks is necessary to provide the services. The Contractor is entitled to visit County offices and key facilities as approved by the County, during regular business hours to obtain the necessary data. The Contractor will schedule conferences at convenient times with key administrative personnel of the County to gather the information.

6. PERSONNEL

6.01 To induce the County to enter into the Contract, the Contractor represents and warrants that the Contractor is authorized to do business under the laws of the State of Texas and is duly qualified to perform the services as set forth in the Contract. The execution of this Contract is within the Contractor's authorized powers, and is not in contravention of federal, state, or local law.

6.02 The Contractor warrants that all employees and contractors of the Contractor assigned to the performance of the services are qualified and authorized to perform the services under the state and local laws and governing professional association rules where the employee is employed. This includes, but is not limited to, the possession and maintenance of the professional licenses required by law and, where appropriate, admission by the State Bar of Texas.

6.03 Each employee must devote the time, attention, skill, knowledge, and professional ability as is necessary to most effectively and efficiently perform the services according to professional standards.

6.04 Contractor warrants that all attorneys and contractors who provide legal representation to clients under this Agreement shall be and shall remain members in good standing of the State Bar of Texas.

6.05 The initial staffing plan is described in the Contractor's response to the RFP (Appendix C). Contractor warrants that it shall maintain adequate staffing levels to provide the attorney services required to be provided by Contractor under

this Agreement and presented in the Contractor's response to the RFP. Whenever an employee assigned to this Contract must be replaced for any reason, the Contractor must supply an acceptable replacement as soon as possible.

6.06 Employees' daily working hours will be determined by the Contractor.

7. ADMINISTRATION

7.01 Contractor will perform the Scope of Services defined in Appendix A. Contractor shall provide the County with the monthly and quarterly reports set forth in Appendix A.

7.02 Contractor must inform the County as soon as the following types of conditions become known:

- A. Probable delays or adverse conditions which do or may materially prevent the meeting of the objectives of the Contract. The Contractor must accompany this disclosure with a statement of any remedial action taken or contemplated by it; and
- B. Favorable developments or events which enable meeting time schedules or goals sooner than anticipated.

7.03 Contractor shall have no authority in the name of the County to borrow money, commence or defend litigation, spend money, or enter into contracts except as otherwise provided in this Contract.

8. COMPENSATION

8.01 The County agrees to pay Contractor compensation in the amount of \$11,282,910, or \$2,256,582 annually. Despite anything to the contrary in this Contract, if, during annual budget planning and adoption, the Hays County Commissioners Court fails to appropriate funding for this Agreement for the following fiscal year, the County may terminate this Contract after giving Contractor sixty (60) calendar days written notice that this Contract is terminated due to the failure to fund it.

8.02 The County agrees to pay Contractor the amounts set forth in Appendix B, attached. The compensation includes all remuneration to which the Contractor may be entitled. The County will not pay the Contractor for overtime, holiday or other premium charges or other benefits in addition to those stated in Appendix B. All compensation provided by this Contract will be applied toward the provision of indigent criminal defense legal services in Hays County. The Parties recognize that financial best practices hold that Contractor should maintain a cash operating reserve of six-month's worth of unrestricted cash on hand to ensure fiscal stability and continuity of essential services to indigent defendants.

8.03 The Contractor must, upon reasonable notice, be available to participate in any proceeding, whether legal, administrative or otherwise, or in any internal County preparatory meetings for the proceeding, in order to assist the County in any matter relating to the purpose or outcome of this Contract.

8.04 In no event shall the making of payments to Contractor or the continuation of services by the Contractor constitute or be construed as a waiver of any breach of covenant, or any default which may then exist, on the part of the other party, and the making of such payment by the County or the provision of services by Contractor in which any such breach or default exists shall not impair or prejudice any right or remedy available with respect to the breach or default.

9. METHOD OF PAYMENT

9.01 The County will pay for the proper performance of the services, commensurate with the progress of the work as evidenced by the timely performance of the services as set forth in Appendix B, after it receives an invoice for payment. The invoice must certify the total cost of the services rendered to date and the cost of all services for that billing period; and must describe the services rendered. The Contractor must sign the invoice and send it to the County for each calendar month. This section is limited by the provisions of Article 8 with regard to the amounts payable for performance.

9.02 The Contractor must direct invoices to the attention of the individual specified in the Notice provisions, Article 19.

9.03 The Contractor must submit along with the invoices, monthly progress reports indicating the Contractor's activities during the previous month and the number of clients serviced and be signed by an authorized officer of the Contractor.

10. RECORDS - ACCESS

10.01 The Contractor must maintain complete books, ledgers, journals, accounts, or records in which it keeps all entries reflecting its operation pursuant to this Contract. The Contractor must keep the records according to generally accepted accounting practices and for a minimum of seven (7) years after the Contract's termination and completion. The Contractor must also maintain copies of all records, correspondence and documents, including electronically stored information, prepared in anticipation of this Contract, and for this Contract, for a period of seven (7) years after the Contract's termination and completion.

10.02 The County and the Legislative Auditor General have the right to examine and audit all books, records, documents and other supporting data as they deem necessary of the Contractor, or any subcontractors, or agents rendering services under this Contract, whether direct or indirect, which will permit adequate evaluation of the services or the cost or pricing data submitted by the Contractor. The Contractor must include a similar covenant allowing for audit by the County

and the Legislative Auditor General in any contract it has with a consultant or agent whose services will be charged directly or indirectly to the County. The County may delay payment to the Contractor pending the results of any such audit without penalty or interest.

10.03 The Contractor agrees that representatives of the County are entitled to make periodic inspections to ascertain that the Contractor is properly performing the services. The inspections may be made at any time during normal business hours of the Contractor. If, in the course of the inspections, the representatives of the County should note any deficiencies in the performance of the services of the Contractor, or any other mutually agreed upon performance deficiencies, the alleged deficiencies must be reported promptly to the Contractor, in writing. The Contractor agrees to promptly remedy and correct any agreed upon reported deficiencies within ten (10) days of notification by the County.

10.04 If, as a result of any audit conducted by or for a County, State of Texas or Federal agency relating to the Contractor's performance under this Contract, a discrepancy should arise as to the amount of compensation due the Contractor, the County may retain the amount of compensation in question from any funds allocated to the Contractor but not yet disbursed under the Contract. Should a deficiency still exist, the County may offset such a deficiency against the compensation to be paid the Contractor in any successive or future Contracts between the parties.

10.05 If, as part of any audit conducted by or for a County, the State of Texas or a Federal agency relating to the Contractor's performance under this contract, a request is made to review any materials that include confidential client information, Contractor may in its own discretion, redact confidential client information, as provided by legal and professional standards, before providing those materials for review.

11. RELATIONSHIP OF PARTIES

11.01 The relationship of the Contractor to the County is and will continue to be that of an independent contractor. No liability or benefits, such as workers' compensation, pension rights, or insurance rights, arising out of, or related to a contract for hire or employer/employee relationship, accrues to either party or either party's agent, subcontractor or employee as a result of this Contract. No relationship, other than that of independent contractor will be implied between the parties, or either party's agent, employee, or subcontractor. The Contractor agrees to hold the County harmless from any claims, and any related costs or expenses.

11.02 For all purposes, County employees will remain employees of the County and the Contractor's employees will remain employees of the Contractor. The Contractor is being retained by the County as an independent contractor to provide services to the County and is not being retained in any capacity as a joint enterprise or venture with the County. The Contractor also covenants that none of its

employees are or will be, during the period of this Contract, employees of the County.

12. INSURANCE

12.01 Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services by the Contractor, its agents, representatives, or employees. Contractor shall maintain the insurance limits outlined below.

12.02 Contractor shall maintain at least the following minimum coverage:

- A. Commercial General Liability (CGL) on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Contract or the general aggregate limit shall be twice the required occurrence limit.
- B. Umbrella or Excess Liability Policy in an amount not less than \$3,000,000. Umbrella or Excess policy wording shall be at least as broad as the primary or underlying policy(ies) and shall apply both to the Contractor’s general liability and to its automobile liability insurance and shall be written on an occurrence basis. The County, officials, employees and others as may be specified in any "Special Conditions" shall be named as an additional insured under this policy.
- C. Automobile Liability with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- D. Workers’ Compensation insurance with Statutory Limits, and Employer’s Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
- E. Professional Liability (Errors and Omissions) Insurance that is appropriate to the Contractor’s profession, with limits no less than \$3,000,000 per occurrence or claim, \$3,000,000 aggregate.

12.03 Additional Insured Status. The County, its officers, officials, employees, volunteers, and others as may be specified in any "Special Conditions" shall be additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an

endorsement to the Contractor's insurance.

12.04 Primary Coverage. For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

12.05 Notice of Cancellation. Each insurance policy shall state that coverage shall not be canceled, except with notice to the County.

12.06 Waiver of Subrogation. Contractor grants to the County a waiver of any right to subrogation which any insurer of the Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

12.07 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

12.08 Claims-made Policies. If any of the required policies provide coverage on a claims-made basis:

- A. The Retroactive Date must be shown and must be before the date of the Contract or the date the Contractor starts to perform the services.
- B. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Contract.
- C. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Contract work.

12.10 Verification of Coverage. Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Article. The County shall receive and approve all certificates and endorsements before the Contractor begins providing services. Failure to obtain the required documents prior to commencement of services shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by the Article, at any time.

12.11 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance satisfying all the stated requirements, and Contractor shall ensure that the County is an additional insured on insurance required from subcontractors.

12.12 Special Risks or Circumstances. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

12.13 The Contractor must submit certificates evidencing the insurance to the Risk Management Division at the time the Contractor executes the Contract, and at least fifteen (15) days prior to the expiration dates of expiring policies.

13. INDEMNIFICATION

13.01 EXCEPT FOR CLAIMS ARISING FROM THE COUNTY'S GROSS NEGLIGENCE, THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND SAVE HARMLESS THE COUNTY AGAINST, AND FROM ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, COSTS, CHARGES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS) WHICH MAY BE IMPOSED UPON, INCURRED BY OR ASSERTED AGAINST THE COUNTY BECAUSE OF ANY OF THE FOLLOWING OCCURRING DURING THE TERM OF THIS CONTRACT:

- A. ANY NEGLIGENT OR TORTIOUS ACT, ERROR, OR OMISSION HELD IN A COURT OF COMPETENT JURISDICTION TO BE ATTRIBUTABLE, IN WHOLE OR IN PART TO THE CONTRACTOR, OR ANY OF ITS PERSONNEL, EMPLOYEES, CONSULTANTS, AGENTS, OR ANY ENTITIES ASSOCIATED, AFFILIATED, (DIRECTLY OR INDIRECTLY) OR SUBSIDIARY TO THE CONTRACTOR NOW EXISTING, OR TO BE CREATED, THEIR AGENTS AND EMPLOYEES FOR WHOSE ACTS ANY OF THEM MIGHT BE LIABLE.

- B. ANY FAILURE BY THE CONTRACTOR, OR ANY OF ITS EMPLOYEES TO PERFORM ITS OBLIGATIONS EITHER IMPLIED OR EXPRESSED UNDER THIS CONTRACT.

13.02 The Contractor agrees that it is its responsibility and not the responsibility of the County to safeguard the property and materials that the employees of the Contractor use in performing this Contract. The Contractor must hold the County harmless for costs and expenses resulting from any loss of the property and materials used by its employees pursuant to the performance of the Contractor under this Contract.

13.03 Nothing in this article shall be deemed to relieve the Contractor of its duty to defend the County, as specified, pending a determination of the respective liabilities of the Contractor and the County, by legal proceeding or agreement. The County shall cooperate with the Contractor in the defense against the suit. In no

event shall the Contractor make any admission of guilt or liability on behalf of the County without the County's prior, written consent.

13.04 THIS INDEMNITY APPLIES WITHOUT REGARDS TO WHETHER THE CLAIM, DAMAGE, LIABILITY OR EXPENSE IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT. THIS INDEMNITY SURVIVES DELIVERY AND ACCEPTANCE OF SERVICES.

13.05 THIS INDEMNITY MUST NOT BE CONSTRUED AS A WAIVER OF ANY GOVERNMENTAL IMMUNITY THE COUNTY, ITS AGENCIES, OR EMPLOYEES, HAS AS PROVIDED BY STATUTE OR MODIFIED BY COURT DECISIONS.

14. NOTICE OF MATERIAL CHANGES

14.01 The Contractor must immediately inform the County of material changes in its operation, ownership or financial condition. Material changes include, but are not limited to:

- A. Decrease in, or cancellation of, insurance coverage.
- B. Delinquent payment, or nonpayment, of tax obligations.
- C. Delinquent payment, or nonpayment, of payroll obligations.
- D. Delinquent funding, or nonfunding, of pension or profit sharing plans.
- E. Delinquent payment, or nonpayment, of subcontractors.
- F. Termination of, or changes in, subcontracts.
- G. Transfer, sale, assignment or delegation to an entity other than the Contractor, of ownership or administrative services.

15. TERMINATION

15.01 The County may terminate this Contract if the Contractor is in default of any of its obligations under the Contract or has failed to comply with any of the material terms and conditions of this Contract, by giving written notice to the Contractor. Before the County exercises its right to declare the Contractor in default, the County must give the Contractor Notice of its default status and the reasons for such status. If the Contractor does not cure the default within five (5) working days, the Contract is deemed terminated twenty-five (25) days after the date of the Notice. If after Notice, the County determines that the Contractor was not in default, the rights and obligations of the parties are the same as if the Notice had not been issued. Upon terminating the Contract, County shall not incur any further liability to Contractor, except as provided in this Article, which sets forth Contractor's exclusive remedies.

15.02 After receipt of a Notice of Termination and except as otherwise directed by the County, the Contractor must:

- A. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
- B. Obligate no additional contract funds for payroll costs and other costs beyond the date as the County specifies.
- C. As of the date the termination is effective, present all Contract records and submit to the County the records, data, notes, reports, discs, and documents ("Records") as the County specifies, all pertinent keys to files, and carry out such directives as the County may issue concerning the safeguarding or disposition of files and property. For purposes of this Agreement, individual client case files are specifically excluded from the records required to be turned over to the County.
- D. Refund to the County any unexpended cash reserves maintained under section 8.02 which resulted from payments made to Contractor by the County under this or a preceding contract.
- E. Submit within thirty (30) days a final report of receipts and expenditures of funds relating to this Contract.
- F. Place no further orders on subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this Contract as is not terminated;
- G. Terminate all orders and subcontracts to the extent that they relate to the portion of work so terminated;
- H. Submit within thirty (30) days a listing of all creditors, subcontractors, lessors, and other parties with which the Contractor has incurred financial obligations pursuant to the Contract.

15.03 Upon termination of this Contract, all Records prepared by the Contractor under this Contract or in anticipation of this Contract must, at the option of the County, become its exclusive property, whether or not in the possession of the Contractor. The Records are free from any claim or retention of rights on the part of the Contractor except as specifically provided. The County must return all the properties of the Contractor to it.

15.04 Access to the records prior to delivery must be restricted to authorized representatives of the County and the Contractor. The Contractor has no right to disclose or use any information gathered in the course of its work without obtaining the written concurrence of the County. All the information must be confidential

and handled in such a manner at all times as to preserve confidentiality. The Records as well as any related products and materials are proprietary to the County, having been developed for the County for its own and sole use.

15.05 In addition, each party will assist the other party in the orderly termination of this Contract and the transfer of all aspects, tangible or intangible, as may be necessary for the orderly, non-disrupted business continuance of each party.

16. NOTICES

16.01 All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Contract must be given in writing and both emailed and mailed by first-class mail and addressed as follows:

Contractor: Matthew Knecht
Chief of Management
Neighborhood Defender Service
317 Lenox Avenue, 10th Floor
New York, New York 10027
mknect@neighborhooddefender.org

County: Hays County Judge
111 E. San Antonio St., Suite 300
San Marcos, TX 78666

With Copy to: General Counsel
111 E. San Antonio St., Suite 202
San Marcos, TX 78666
mark.kennedy@co.hays.tx.us

16.02 All notices are deemed given on the day of mailing. Either party to this Contract may change its address for the receipt of notices at any time by giving notice to the other as provided. Any notice given by a party must be signed by an authorized representative of such party.

16.03 Termination notices, change of address notices, and other notices of a legal nature, are an exception and must be sent by registered or certified mail, postage prepaid, return receipt requested.

17. CONFIDENTIAL INFORMATION

17.01 If the County discloses confidential information to the Contractor's employees pertaining to the County's past, present and future activities, the Contractor must instruct its employees to regard all information gained by each

person as a result of the services to be performed as information which is confidential and not to be disclosed to any organization or individual without the prior written consent of the County.

17.02 The Contractor agrees to take appropriate action with respect to its employees to ensure that the obligations of nonuse and non-disclosure of confidential information concerning this Contract can be fully satisfied.

18. COMPLIANCE WITH LAWS

18.01 The Contractor must comply with and must require its employees to comply with all applicable laws and regulations.

18.02 The Contractor must hold the County harmless with respect to any damages arising from any violations of this Article by it or its employees.

19. DEBARMENT AND SUSPENSION

19.01 The Contractor certifies to the best of its knowledge and belief, that:

- A. The Contractor and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal agency;
- B. The Contractor and its principals have not, within a three (3) year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connections with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. The Contractor and its principals are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in 24.01 b above; and;
- D. The Contractor and its principals have not, within a three (3) year period preceding this contract, had one or more public transactions (Federal, State or local) terminated for cause or default.

19.02 The certification in this clause is a material representation of fact upon which reliance was placed. When the County determines that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the County, the County may terminate this Contract for cause or

default.

19.03 The Contractor shall provide immediate written notice to the County if, at any time, Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

19.04 The Contractor agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the County.

19.05 A Contractor may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Contractor may decide the method and frequency by which it determines the eligibility of its principals. Each Contractor may, but is not required to, check the Non-procurement List (of excluded parties).

19.06 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

19.07 If a Contractor is in a covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the County, the County may terminate this transaction for cause or default.

20. SUBCONTRACTING AND ASSIGNMENT

20.01 The Contractor will advise the County before subcontracting the obligations created in this Agreement. The Contractor will advise the County before terminating any such subcontract. Such approval shall not in any way relieve the Contractor of full responsibility for the performance of the Contract. The Contractor must also direct notices to the attention of the individual specified in the Notice provisions, Article 16.01. The Contractor must not assign this Contract, nor any part, or subcontract any of the work or services to be performed without the County's prior written approval. Any unauthorized assignment or transfer will be considered a breach of this Contract and result in the termination of the Contract at the County's discretion. If the Contract is not terminated, the assignment shall be deemed null and void.

21. BANKRUPTCY OR INSOLVENCY

21.01 If the Contractor is adjudicated bankrupt or insolvent, or if a trustee is

appointed over the Contractor or any of its property, whether it is a third party or Contractor as debtor-in-possession (referred to as "Contractor" in this Article unless the context clearly requires otherwise) the following rights, obligations and limitations control:

- A. Contractor or any trustee must not assign any or all of its rights, title or interest, in or to this Contract, as this Contract is for the delivery of professional services and related services, as to which the County is entitled to insist upon performance solely by the Contractor.
- B. Contractor or any trustee may only assume this Contract if it provides adequate assurance of future performance. Adequate assurance of future performance means proof reasonably satisfactory to the County
 - (i) adequate financial capacity to employ or contract with sufficient personnel to perform the services assigned to the Contractor as provided in this Contract, and to pay for all services contracted for by the Contractor;
 - (ii) adequate financial capacity to own, operate, lease or obtain sufficient facilities and supplies to perform the services assigned to the Contractor as provided for in this Contract; and
 - (iii) adequate financial and professional capacity to maintain the professional standard provided in this Contract. The reasonable determination of the County as to the adequate professional capacity of the Contractor is determinative.
- C. Because of the unique nature of the services this Contract requires the Contractor to provide, the Contractor agrees that any requests by the County that the trustee or it as debtor-in-possession assume or reject this Contract in a shorter time than provided for in 11 U.S.C. §365 is reasonable so long as the trustee or Contractor receives no less than five (5) business days' notice.
- D. If this Contract is terminated during bankruptcy proceedings or if the trustee or debtor-in-possession successfully and properly obtains a court order rejecting this Contract, the Contractor as debtor-in-possession or its trustee must cooperate with the County in arranging for the orderly transfer of responsibilities to persons or entities as the County may designate. The rejection is not effective until the orderly transfer of responsibilities, consistent with sound professional practice, has been completed.

21.02 Although neither party has the right to terminate the Contract merely because the other is adjudicated bankrupt or insolvent or a trustee or a debtor-in-possession is appointed over any parties' property, each party retains all of the other termination rights set forth elsewhere in this Contract during the period of any proceedings under the Bankruptcy Code.

22. MISCELLANEOUS

22.01 The Contractor covenants that it is not, and will not become, in arrears to the County upon any contract, debt, or any other obligation to the County, including real property and personal property taxes.

22.02 All the provisions of this Contract are "covenants" and "conditions" as though the words specifically expressing or imparting covenants and conditions are used in each provision.

22.03 If any Affiliate of the Contractor takes any action which, if done by the Contractor, would constitute a breach of this Contract, the action is deemed a breach by the Contractor. "Affiliate" is a "parent", subsidiary or other company controlling, controlled by or in common control with the Contractor.

22.04 Neither party is responsible for force majeure events.

22.05 Unless the context otherwise requires, the words, "herein", "hereof" and "hereunder", and other words of similar import, refer to this Contract as a whole and not to any particular article, section, or other subdivision.

22.06 The headings of the articles in this Contract are for convenience only and must not be used to construe or interpret the scope or intent of this Contract or in any way affect the Contract.

22.07 As used, the singular includes the plural, the plural includes the singular, and the use of any gender is applicable to all genders.

22.08 The Contractor warrants that any products sold or processes used in the performance of this Contract do not infringe upon or violate any patent, copyright, trademark, trade secret or any other proprietary rights of any third party. If a third party makes a claim against the County, the County must promptly notify the Contractor. The Contractor must defend the claim in the name of the County, at the Contractor's expense. The Contractor must indemnify the County against any loss, cost, expense or liability arising out of the claim, whether or not the claim is successful.

28.10 No failure by a party to insist upon the strict performance of any term of this Contract or to exercise any term after a breach, constitutes a waiver of any breach of term. No waiver of any breach affects or alters this Contract, but every

term of this Contract remains effective with respect to any other then existing or subsequent breach.

28.11 The Contractor shall secure all permits necessary to perform the services and shall comply with all statutes, ordinance, and laws.

28.12 If any provision of this Contract or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Contract, or the application of the provision to persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable. Such severance shall be as narrow as possible and shall not affect the remainder of this Agreement in such action and other actions, unless the court shall also find, on the request of the party that asserted the enforceability of the provision, that without such provision as originally written, this Agreement is not likely to meet the reasonable commercial expectations of such party and in such case, the court shall enter an equitable judgment of rescission, termination, or reformation of this Agreement as necessary to reach an equitable result.

28.13 This document, including the Appendices, contains the entire agreement between the parties and all prior negotiations and agreements are merged in this document. Neither party has made any representations except those expressly set forth. No rights or remedies are, or will be acquired by either party by implication or otherwise unless set forth.

28.14 The County or the Contractor may contract with other firms providing the same or similar services so long as the Contractor's obligations to the County contained in this Contract will not be affected in any manner.

28.15 If the division of Human Relations determines that the Contractor has not made a full disclosure in its affidavit regarding its investments in, support or profit in some manner from the institution of slavery, that failure shall constitute a substantial breach of this Contract, sufficient to warrant rescission of the Contract, the institution of liquidated damages, and debarment from any further business with the County.

28.16 Section 2252 of the Texas Government Code restricts the County from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Contractor hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

28.17 Pursuant to Chapters 2270 and 808 of the Texas Government Code, Contractor certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.

23. AUTHORIZATION AND CAPABILITY


23.01 The Contractor warrants to the County that it has taken all corporate actions necessary for the authorization, execution, delivery and performance of this Contract. It is ready to perform its obligations. The Contractor further warrants that the person signing this Contract is authorized to do so, on behalf of the Contractor, and is empowered to bind the Contractor to this Contract.

24. SIGNATURE

24.01 The County and the Contractor, by their authorized officers and representatives have executed this Contract.

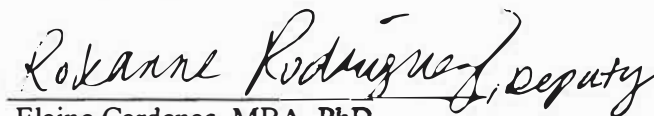
[SIGNATURES TO FOLLOW ON NEXT PAGE]

COUNTY OF HAYS

By: 

Ruben Becerra
Hays County Judge



ATTEST: 

Elaine Cardenas, MBA, PhD
Hays County Clerk

NEIGHBORHOOD DEFENDER
SERVICE, INC.



By: RICK JONES
EXECUTIVE DIRECTOR/C.E.O.

APPENDIX A SCOPE OF SERVICES

1. Scope of Services
 - 1.1 Contractor will represent clients in criminal cases in Hays County on the terms and conditions contained in the Agreement and this Appendix.
 - 1.2 NDS will be assigned up to the equivalent of 1,434 misdemeanor cases annually over the term of this contract for years two through five, where a misdemeanor counts as 1 misdemeanor case and a felony counts as 1.87 misdemeanor cases. The caseload will be prorated for the partial, first year of this contract.
 - 1.3 In accordance with the County's goal to provide a model program that incorporates nationally recognized best practices for criminal defense, Contractor may intake cases through Contractor's community intake practice. Contractor must act promptly in filing an appearance in order to exercise its intake option. Contractor's community intake practice shall include indigent clients, with cases where no arrest has yet been made, or cases where Contractor has a pre-existing relationship with the client, or cases where no attorney has yet been assigned, or cases where the client would otherwise need to be assigned new counsel (for example, when the client's assigned counsel must withdraw due to conflict). Community intake cases shall count towards Contractor's obligation to handle up to the equivalent of 1434 misdemeanor cases annually, where a misdemeanor counts as 1 misdemeanor case and a felony counts as 1.87 misdemeanor cases.
 - 1.4 Contractor shall provide additional services to clients that address civil and social needs that arise from their criminal cases, to the extent those services are supported by supplemental funding obtained by Contractor. Such services may include assistance with mental health and drug treatment needs, housing and employment needs, child support adjustments, immigration proceedings, educational needs, access to veteran's services, prevention of eviction, asset forfeiture proceedings, and public benefits and healthcare needs.
2. Caseload
 - 2.1 Contractor shall make reasonable efforts to provide continuity of representation at all stages of a case. However, nothing in this Agreement shall prevent Contractor from (i) making assignment changes or staff rotations, as it deems necessary, at reasonable intervals; or (ii) assigning an attorney to handle a specific event associated with the client's representation, if such method of assignment is a reasonable method for

providing effective representation.

2.2 Except by mutual agreement, Contractor shall have no obligation to provide staffing for any significant increases in workload resulting from changes in court calendars, including the need to staff additional courtrooms.

2.3 In the event that Contractor is unable to continue to represent a client, or is unable to satisfactorily handle one or more cases assigned to it, Contractor will file a motion to withdraw and, if granted, return all such cases to the Court for reassignment by the County.

3. Assignment of Cases. -

3.1 Assignment protocols shall be determined in collaboration with the Court Coordinator(s) for the criminal courts of Hays County.

3.2 The Parties agree that up to approximately half of the cases assigned to Contractor shall be those with defendants exhibiting mental health concerns. The Parties agree that an initial method for satisfying this objective shall be referral of any case for which a magistrate has ordered a mental health evaluation pursuant to Section 16.22 of the Texas Code of Criminal Procedure.

3.3 All appointments under this Agreement shall be made in compliance with Chapter 26 of the Code of Criminal Procedure.

4. Reports and Invoices

4.1 Beginning on the tenth day of the month following the commencement of this Agreement, and on a monthly basis thereafter during the term of the Agreement or any extension thereof, Contractor shall provide the County with a monthly program report containing the number of cases assigned and the number of case dispositions, for which services have been rendered, including the number of cases from community intake. An authorized agent of Contractor must sign the monthly report.

4.2 The County shall notify Contractor within fifteen (15) days of receipt of a report from Contractor if there are any material discrepancies between the assigned caseload as indicated in Contractor's monthly reports and the assigned caseload as indicated by internal Court or County audits.

4.3 No later than fifteen (15) days before the first day of each month during the term of this Agreement, Contractor shall send to the County an invoice for services to be rendered during the following month pursuant to this Agreement. Invoices shall be paid no later than fifteen (15) days following the County's receipt of the invoice. Each such monthly invoice shall reflect the amount due to Contractor pursuant to section 8 of the Agreement and Appendix B, paragraph 1.

- 4.4 Beginning on the tenth day of the month following the commencement of this Agreement, and on a monthly basis during the term of the Agreement of any extension of it, Contractor shall provide the County with a monthly financial report containing, among other information, the amounts spent in all budget categories for the preceding month.

The reports and invoices shall be sent to the County at the addresses set forth in Article 19 of the contract.

5. Review

- 5.1 The County may request renegotiation of this Agreement to provide for additional attorney services. Any additional services shall be provided only when the County has approved funding and payment as a result of a mutually agreed-upon modification of this Agreement.
- 5.2 If Contractor determines, in its sole discretion, that Contractor has been assigned cases that exceeds the number or nature of cases that Contractor is obligated to accept under this Agreement, Contractor may request renegotiation of the compensation to be paid under this Agreement. Any such request shall be in writing and shall contain an estimate of the actual additional funding deemed necessary to fund the cost of the required identified additional services. The County shall respond to the request in writing within thirty (30) days of receipt.

APPENDIX B COMPENSATION

For services rendered during the term of this Agreement, the County shall pay Contractor a total fee not to exceed \$11,282,910.

1. Annually, the County will pay Contractor twelve (12) payments of \$188,048.50 each. These funds will be provided for Contractor to take all necessary steps to handle the caseload described in 1.2 and 1.3 of this Appendix.
2. On a case by case basis, Contractor may request reimbursement for travel related to visiting clients in custody outside of Hays County.

**APPENDIX C
RFP AND RESPONSES**