

PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of _____, 2018, between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and SENTINEL OFFENDER SERVICES, LLC, 201 Technology Drive, Irvine, CA 92618, (**CONTRACTOR**) for electronic monitoring for Community Corrections as described in "Request for Proposal #2-2018, Exhibit A.

OWNER and **CONTRACTOR**, in consideration of their mutual covenants, herein agree in respect to the provision of electronic monitoring services (**PROJECT**) by **CONTRACTOR** and the payment for those services by **OWNER** as set forth below.

SECTION 1 - BASIC SERVICES OF CONTRACTOR

1.1. General

CONTRACTOR shall perform professional services as hereinafter stated that include customary services and equipment incidental thereto.

The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: Request for Proposal No. 2-2018 (Exhibit "A"), Certificates of Insurance (Exhibit "B"), and **CONTRACTOR'S** Response, pp. 1-164 and pp. 200- 207, dated February 6, 2018 (Exhibit "C").

To the extent of any conflict among the provisions of these documents and/or this Agreement, the provisions of this Agreement shall control, followed by the provisions of EXHIBIT A, then EXHIBIT C.

1.2. Project Phase

After written authorization to proceed, **CONTRACTOR** shall:

1.2.1. Notify the **OWNER** in writing of its authorized representative who shall act as Project Manager and liaison representative between the **CONTRACTOR** and the **OWNER**. The **CONTRACTOR** must perform all duties necessary to fully complete the services described in attached Exhibit A.

1.2.2. Immediately notify **OWNER** of any delay in the delivery of its services, regardless of cause. Give written notice to **OWNER** within five (5) business days whenever **CONTRACTOR** observes or otherwise becomes aware of any development that affects the scope or timing of **CONTRACTOR'S** services.

SECTION 2 - EXTRA WORK BY CONTRACTOR

- 2.1. The **OWNER** may desire to have the **CONTRACTOR** perform work or render services in connection with this **PROJECT** other than provided by the expressed intent of this Agreement. Such work shall be considered as "Extra Work", subject to a modified Task Order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such modified Task Order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted project deliverables / reports or parts thereof revised, the **CONTRACTOR** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as "Extra Work" and shall be paid as such.
- 2.2. All "Extra Work" is subject to prior written authorization of **OWNER** and, if necessary, appropriations made by the Urban County Council.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the **PROJECT**, including objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **CONTRACTOR** by placing at his disposal available information pertinent to the **PROJECT**.
- 3.3. Give written notice to **CONTRACTOR** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONTRACTOR'S** services.
- 3.4. Furnish or direct **CONTRACTOR** to provide, necessary Extra Work as stipulated in Section Two (2) of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICES

- 4.1. Time is of the essence in the performance of this Agreement. Provision and services and equipment shall begin upon May 1, 2018 and continue for a period of two years, subject to the provisions of Section 5.1 This period of service may be extended or otherwise altered with the mutual consent of the parties in accordance with the attached exhibits.
- 4.2. The provisions of this Section Four (4) and the rates of compensation for **CONTRACTOR'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the provision of said services and equipment.

SECTION 5 - PAYMENTS TO CONTRACTOR

5.1. Methods of Payment for Services of CONTRACTOR.

5.1.1 For Basic Services

OWNER shall issue a Notice to Proceed for services to be performed under this Agreement by **CONTRACTOR** or its sub-**CONTRACTORS**. The execution of this Agreement shall constitute the Notice to Proceed for all services and equipment agreed upon in the attached documents.

5.1.2 For Extra Work

Extra Work shall be paid for by the **OWNER** on the basis of a fixed fee, the amount of which shall be determined by negotiation. The **OWNER** shall have the right to negotiate alternate methods of payment for Extra Work if the **OWNER** determines that the fixed fee basis is not feasible. In the event the **OWNER** and the **CONTRACTOR** are unable to agree upon the amount of payment for Extra Work, then the amount of such payment shall be determined pursuant to Section 6.4 (**Disputes**).

5.2. Times of Payment

5.2.1 CONTRACTOR shall submit to **OWNER** detailed monthly statements for Basic Services and Extra Work rendered. The Statements shall include: participants names and the number of days being billed. The cost billed shall include:

- Daily RF Cellular lease rate of \$2.91
- Daily Remote alcohol Unit lease rate of \$5.65
- Daily GPS Equipment lease rate
 - Active (1 minute GPS/1 hour transmit/15 minute impaired) at \$3.68
 - Passive (1 minute GPS/3 hour transmit/30 minute impaired) at \$3.54
- Participant Cell Phone lease rate of \$1.50 after 10 phones at no cost
- Daily Shelf Rate over Maximum allowed of \$1.25

OWNER shall respond to **CONTRACTOR'S** monthly statements within thirty (30) days, either denying payment or making payment.

5.2.2 CONTRACTOR shall provide the **OWNER** with a Loss Allowance of 3 units per year or 20% of daily average, whichever is greater. If **OWNER** exceeds loss allowance billing for those must occur within 6 months of reported loss. Unit pricing for billing shall be:

- GPS Tracking Device --\$850.00
- Portable Breath Alcohol Device --\$800.00
- Radio Frequency Home Monitoring Unit (Landline) --\$700.00
- Radio Frequency Home Monitoring Unit (Cellular) --\$850.00
- Radio Frequency Transmitter --\$250.00

5.3. Other Provisions Concerning Payments

- 5.3.1.** In the event the Agreement is terminated by the **OWNER** without fault on the part of the **CONTRACTOR**, the **CONTRACTOR /SUBCONTRACTOR** shall be paid for the work performed or services rendered for which it has not already been paid in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **CONTRACTOR**.
- 5.3.2.** In the event the services of the **CONTRACTOR** are terminated by the **OWNER** for fault on the part of the **CONTRACTOR**, the **CONTRACTOR/ SUBCONTRACTOR** shall be paid reasonable value of the work performed or services rendered and delivered for which it has not already been paid, and the amount to be paid shall be determined by the **OWNER**.

SECTION 6 - GENERAL CONSIDERATIONS

6.1. Termination

6.1.1. **CONTRACTOR** may only terminate this Agreement due to **OWNER'S** material breach of the terms hereof which breach causes **CONTRACTOR** to be unable to perform its duties and responsibilities under this Agreement and upon forty-five (45) days written advance notice to **OWNER**.

6.1.2. Termination for Cause

- (1) **OWNER** may terminate the **AGREEMENT** because of the **CONTRACTOR'S** failure to perform its contractual duties
- (2) If **CONTRACTOR** is determined to be in default, **OWNER** shall notify the **CONTRACTOR** of the determination in writing, and may include a specified date by which **CONTRACTOR** shall cure the identified deficiencies. **OWNER** may proceed with termination if **CONTRACTOR** fails to cure the deficiencies within the specified time.
- (3) A default in performance by a contractor for which the **AGREEMENT** may be terminated shall include, but shall not necessarily be limited to:
- (a) Failure to perform the contract according to its terms, conditions and specifications;
 - (b) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract;
 - (c) Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency;

- (d) Failure to diligently advance the work under a contract for construction services;
- (e) The filing of a bankruptcy petition by or against the contractor; or
- f) Actions that endanger the health, safety or welfare of the **OWNER** or its citizens.

6.1.3. Notwithstanding the above provisions, the **OWNER** may terminate this contract at will in accordance with the law upon providing thirty (30) days written notice of that intent, Payment for services or goods received prior to termination shall be made by the **OWNER** provided these goods or services were provided in a manner acceptable to the **OWNER**. Payment for those goods and services shall not be unreasonably withheld.

6.2. Ownership and Reuse of Documents

All documents, including raw data, reports, memoranda, and other materials prepared by the **CONTRACTOR** pursuant to this Agreement shall be delivered to and become the property of the **OWNER**. The **OWNER** shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to **CONTRACTOR**.

6.3. Legal Responsibilities and Legal Relations

6.3.1. The **CONTRACTOR** shall familiarize himself with and shall at all times comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this Agreement.

6.3.2. In performing the services hereunder, the **CONTRACTOR** and its sub**CONTRACTOR**s, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **CONTRACTOR** shall be acting as an independent contractor. The **CONTRACTOR** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **CONTRACTOR** shall be solely responsible for any claims for wages or compensation by **CONTRACTOR'S** employees, agents and representatives, including sub**CONTRACTOR**s, and shall save and hold **OWNER** harmless therefrom.

6.3.3. The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

6.4. Successors and Assigns

- 6.4.1.** **CONTRACTOR** binds itself and his partners, successors, executors, administrators, assigns and legal representatives to this Agreement in respect to all covenants, agreements, and obligations of this Agreement. **CONTRACTOR** shall not assign any interest, obligation or benefit in this Agreement nor transfer any interest in the same, whether by assignment or novation, without prior written consent of **OWNER**, which shall not be unreasonably withheld.
- 6.4.2.** The **CONTRACTOR** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value of the work. The **CONTRACTOR** shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the **CONTRACTOR** of any responsibility for compliance with the provisions of this
- 6.4.3.** Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **CONTRACTOR**.

6.4. Disputes

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the **OWNER'S** Agent, Director of Community Corrections, and the **CONTRACTOR**. In the absence of such an agreement, the dispute shall be submitted to the **OWNER'S** Commissioner, Department of Public Safety, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **CONTRACTOR** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

6.5. Security Clause

The **CONTRACTOR** certifies that he shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization except the **OWNER** without prior approval of the **OWNER** unless required by law

6.6. Access to Records

The **CONTRACTOR** and his sub-**CONTRACTOR**/ **SUBCONTRACTORS** shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3)

years from the date of final payment under the Agreement for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **CONTRACTOR** from consideration for future Professional Service Agreements.

6.7. Required Risk Management Provisions

The Risk Management Provisions of RFP No. 2-2018 are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to **OWNER** as required therein.

SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the **CONTRACTOR** agrees as follows:

- 7.1.** The **CONTRACTOR** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age, or handicap. The **CONTRACTOR** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age, or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The **CONTRACTOR** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- 7.2.** The **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES

- 8.1.** This Agreement, together with the Incorporated Documents (Section 1.1) constitutes the entire Agreement between **OWNER** and **CONTRACTOR** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS** and any related schedules or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.
- 8.2. NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **CONTRACTOR**.

8.3. UNENFORCEABLE TERMS/SURVIVABILITY. If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.

8.4. NON-WAIVER. The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER:

CONTRACTOR:

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

SENTINEL OFFENDER SERVICES

BY: _____
JIM GRAY, MAYOR

BY: _____
DENNIS
FULLER
CHIEF FINANCIAL OFFICER

ATTEST:

URBAN COUNTY COUNCIL CLERK
COMMONWEALTH OF KENTUCKY

STATE OF _____

COUNTY OF _____

The foregoing Agreement was subscribed, sworn to and acknowledged before me by _____, as the duly authorized representative for and on behalf of _____, on this the ____ day of _____, 2018.

My commission expires: _____.

NOTARY PUBLIC