

COUNCIL ACTION ITEM

September 2023

Revisions to Funded Program Contract Agreement for FY 2023-24

Background Information (*brief history of the situation*): Each year, the Children's Services Council enters into contractual agreements with its annually funded programs. The contract agreement outlines the roles and responsibilities of the funded programs as well as CSC, including but not limited to, provision of services, obligation to keep Council informed, maintenance of records and books (including the audit), background screening, payment to the provider, insurance coverage, and appropriation of funds. Prior to the start of the new fiscal year, the CSC team and attorney review the contract for any appropriate changes. Based on discussion and consultation with the attorney's office, proposed revisions have been made to the 2023-24 contract agreement. The contract agreements are sent to the providers in September through our grants management system for electronic signature (The Hub).

Current Situation (*why it is being brought to Council now*): The major changes to the FY 23-24 Funded Program Contract are edits under sections:

- **II. Payment to the Provider** – clarifies if CSC disputes any reimbursement request (such as not complete), requires CSC to notify provider and reserves the right to off-set, reduce or withhold payment to the provider till dispute is resolved.
- **V. Monitoring, Required Records and Reports** – for individual client data entry, provides a financial penalty for programs that fall more than 30 days behind in data entry. Language mirrors the current aggregate/quarterly data timelines/penalties.
- **VI. Sharing of Information** – provides clarification of data to be collected by provider including ensuring appropriate parental releases for sharing of information with CSC.

Contract with tracked changes attached.

Action (*requested or required of Council*): CSC team is requesting that Council approve the proposed 2023-24 Funded program Contract Agreement.

Team Recommendation:

STRENGTHS:

- Revisions protect CSC.

CONCERNS:

- None

CSC team is in support of the proposed FY 2023-24 Provider Contract Agreement.

sb 8-23-23

**AGREEMENT BETWEEN
THE CHILDREN'S SERVICES COUNCIL OF ST. LUCIE COUNTY
AND
[AGENCY]
[program]**

THIS AGREEMENT, made this 1st day of October 2021, is by and between the *CHILDREN'S SERVICES COUNCIL OF ST. LUCIE COUNTY*, an independent special taxing district of the State of Florida, hereinafter referred to as the COUNCIL, and, [AGENCY], hereinafter referred to as the PROVIDER, whose address is [ADDRESS].

WHEREAS, the PROVIDER has submitted a proposal to provide certain services for the children and families of St. Lucie County; and

WHEREAS, the COUNCIL has determined that it is in the best interest of the children and taxpayers of St. Lucie County to enter into this Agreement with the PROVIDER.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties intending to be legally bound, hereby agree as follows:

- I. **SERVICES TO BE PROVIDED** - The PROVIDER agrees to provide the services set forth in its proposal to COUNCIL and attached budget and outcomes which are on file with the COUNCIL and incorporated herein by reference including any written amendments made hereafter through negotiations with the COUNCIL. The PROVIDER agrees to comply with all policies of the COUNCIL, including, but not limited to, those set forth in the *2021-2022 Program Proposal Application* and the *CSC Funding Application, Guidelines and Tentative Schedule*.
- II. **PAYMENT TO THE PROVIDER** - The COUNCIL will reimburse the PROVIDER within 21 days of receipt of a request for reimbursement. The COUNCIL agrees to reimburse up to [written dollar amount] (\$numeric), for actual costs incurred for services rendered pursuant to this Agreement. All requests for reimbursement must be certified true and correct by the PROVIDER and must be accompanied by the appropriate documentation as prescribed by COUNCIL. Requests for reimbursement are due to the COUNCIL by the 20th day of the month following the related expenses. If the Council disputes any reimbursement request, it will notify the PROVIDER of such dispute. The COUNCIL reserves the right to off-set, reduce, or withhold any payment to the PROVIDER until such dispute is resolved. Further, the COUNCIL shall not be responsible for the reimbursement of any costs or fees incurred by the PROVIDER for the PROVIDER's correction of any errors in services performed or for any incomplete services.
- III. **AGREEMENT COMMENCEMENT AND TERMINATION** –
 - a. This Agreement shall commence on October 1, 2021, and shall terminate no later than September 30, 2022 (the "Contract Term") unless earlier terminated as stated herein. The COUNCIL may terminate this Agreement without cause by giving the provider fifteen (15) days written notice of said intent to terminate. This Agreement may be terminated by the COUNCIL for any breach of terms by the

Commented [JH1]: Sean: (1) It's not required but wondering if it would be helpful to have language included in the contract that makes it clear that the Council will not reimburse the provider for the Provider's correction of any errors in services or work performed; and (2) It's not required but would you like language added to give the Council the right to dispute an invoice and to off-set payment to the Provider until the dispute is resolved?

PROVIDER upon twenty-four (24) hours written notice. If this Agreement is terminated, the COUNCIL's obligation for payment of services rendered under this Agreement shall equal, but not exceed, payment for proper costs and expenses incurred through the date of termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination.

b. PROVIDER understands and acknowledges that the funding will only be for the term stated herein.

IV. CONTINUING OBLIGATION TO KEEP THE COUNCIL INFORMED - The parties agree that their relationship will be enhanced and the possibility of misunderstandings or disputes will be reduced if they communicate on a regular basis. In particular, the PROVIDER acknowledges the importance in keeping the COUNCIL informed relative to the services it is providing. The PROVIDER will promptly notify the COUNCIL prior to any significant change(s) in the delivery of the services as set forth in its proposal. Significant changes that would require notification to the COUNCIL would include, but not be limited to, the commencement or conclusion of employment of key staff, such as the executive director or program coordinator. In addition, the PROVIDER must notify and obtain COUNCIL'S approval prior to effectuating any material change(s) in the delivery of services set forth in its proposal. Material change(s) would include, but not be limited to, location of facilities where services are being provided or the number of staff assigned to a service delivery site. The PROVIDER agrees to permit COUNCIL and its staff to conduct site visits.

V. MONITORING, REQUIRED RECORDS AND REPORTS – PROVIDER agrees:

- a. To assign appropriate staff as necessary to attend meetings with COUNCIL and/or staff to discuss issues and recommendations including, but not limited to, quality of service, service delivery systems, coordination of services, client satisfaction, records, maintenance, and funding maximization.
- b. To provide full access at administrative and service delivery sites to COUNCIL and staff during all announced and unannounced visits, for the purpose of examination of records and data covered by this Agreement as well as observation of service, delivery, and PROVIDER staff. COUNCIL and PROVIDER shall maintain the confidentiality of client services and records in full accordance with any federal or state laws or federal regulations mandating such confidentiality.
- c. To respond to any monitoring findings within the time frame specified therein.
- d. Any monitoring reports and/or accreditation reports from other agencies or funding sources for similar services provided shall be submitted to COUNCIL within thirty (30) days of receipt.
- e. To submit required quarterly program reports as indicated by the schedule below:

<u>Quarter Ending</u>	<u>Program Report Due Date</u>
December 31	January 20
March 31	April 20
June 30	July 20

September 30

October 20

i. If PROVIDER does not comply with the program reporting requirement, it is considered out of compliance. Consequences of failure to comply with the program reporting requirement will include, but may not be limited to, the following:

1. A PROVIDER not in compliance with the program reporting requirement at any report due date will be assessed a financial penalty against their next month's reimbursement request. The financial penalty will be the lesser of 5% of the approved monthly reimbursement or \$500. The amount of this fee cannot be reclaimed under future reimbursement requests. The fee will effectively reduce the total amount reimbursable on a program's budget. For example, a program with a \$120,000 budget that is assessed two \$500 fees will only be able to receive a maximum of \$119,000 for their budget year.
2. The financial penalty fee described in number 1 above will be assessed monthly until the quarterly program report is received subject to provisions of number 3 below.
3. If a quarterly program report is not received before the due date for the next quarterly report, COUNCIL may send written notice to the PROVIDER to terminate the Agreement. The financial penalty fee will continue to be assessed during the termination process up to the point of termination or resolution.
4. In addition, if the Agreement with Provider is terminated or has expired due to delinquent quarterly program reporting, PROVIDER shall be prohibited from receiving any future funding from the COUNCIL unless PROVIDER comes into full compliance with this paragraph including, but not limited to, the submission of the quarterly reports to the COUNCIL, and the COUNCIL in its sole discretion agrees to provide future funding to the PROVIDER.

4-f. If the PROVIDER is responsible for individual client data entry, the PROVIDER shall enter such data daily after each interaction with the client but no less than weekly. If the PROVIDER fails to timely enter individual client data more than thirty (30) days from a client interaction, it is considered out of compliance. If the PROVIDER is not in compliance, it will be assessed a financial penalty against its next month's reimbursement request. The financial penalty will be the lesser of 5% of the approved monthly reimbursement or \$500. The amount of this fee cannot be reclaimed under future reimbursement requests. The fee will effectively reduce the total amount reimbursable on a program's budget. This financial penalty will be assessed monthly until all individual client data entry is in compliance with the timelines herein. If the PROVIDER fails to timely enter individual client data more than sixty (60) days from a client interaction, COUNCIL may send a written notice to the PROVIDER to terminate the Agreement, and the penalty fee will continue to be assessed during the

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termination process up to the point of termination or resolution. If the Agreement with the PROVIDER is terminated due to delinquent data entry or has expired with unresolved delinquent data entry, PROVIDER shall be prohibited from receiving any future funding from the COUNCIL unless the PROVIDER comes into full compliance with this section, including, but not limited to, the entry of all delinquent individual client data, and the COUNCIL, in its sole discretion, agrees to provide future funding to the PROVIDER.

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- VI. SHARING INFORMATION** - The PROVIDER agrees to share with the COUNCIL, and other agencies as specified by the COUNCIL, such information and data, which the COUNCIL determines is appropriate. To facilitate this sharing of information, the PROVIDER agrees to have an appropriate release form signed by the parent or guardian of each client being served through the COUNCIL's funding. Such release form shall include the parent/legal guardian's consent to sharing information with the COUNCIL and the COUNCIL's use and collection of such information in its database. Minimum demographic information will include client unique identifier, street address, zip code, sex, race, age, if a teen parent, if family is served, primary service component and outcomes. Other information may include, but is not limited to, proof of income and/or free/reduced lunch eligibility, if collected by the PROVIDER. Data will be shared via COUNCIL's website, electronic database or spreadsheet (as applicable). The PROVIDER shall comply with all applicable federal, state, and local laws and regulations when using or disclosing information that specifically identifies a recipient of services under this Agreement.
- VII. COMPLIANCE WITH LAWS** - In performing its obligations hereunder, each party agrees to comply in all material respects with all applicable laws. During the term of this Agreement, the PROVIDER shall ensure that it is duly organized, validly existing and in good standing under the laws of Florida. If the COUNCIL becomes aware that a PROVIDER's corporate status is administratively dissolved, the COUNCIL may terminate the Agreement if the PROVIDER does not have its corporate status reinstated within 30 days' written notice by the COUNCIL.
- VIII. NO DISCRIMINATION** - The PROVIDER agrees not to discriminate against any child or family to whom services are being provided or against any employee of the PROVIDER, in violation of any applicable state or federal anti-discrimination laws, including laws prohibiting discrimination on the basis of race, color, gender, age, religion, national origin, disability, or sexual orientation.
- IX. BACKGROUND SCREENING** - The PROVIDER agrees to comply with all state and federal laws, rules and regulations regarding background screening, including criminal record checks, of its employees/volunteers. The PROVIDER shall provide the COUNCIL with a copy of its policies indicating their compliance with these laws and setting forth their policies in regards to background screening/criminal records checks of prospective, as well as current, employees/volunteers. The PROVIDER will also make available to the COUNCIL the results of all such background screenings. The results of said screenings will be kept on file by the PROVIDER for review as deemed necessary by the COUNCIL for a period of two years after termination of this

Agreement. A COUNCIL determination that the PROVIDER has failed to comply with the background screening requirements shall be considered a breach of this agreement and may result in termination of this agreement pursuant to paragraph III. a.

X. PROVIDER AS INDEPENDENT CONTRACTOR - The PROVIDER agrees that it shall be an independent contractor and that its officers, employees or representatives shall not be considered employees of the COUNCIL. All persons engaged in any of the programs or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Provider's sole direction, supervision, and control. The Provider shall exercise control over the means and manner in which it and its employees perform the services and programs. The PROVIDER will be fully responsible for all social security payments, withholding taxes, workers' compensation insurance and liability insurance for the PROVIDER, its officers, employees and representatives, and the COUNCIL shall have no responsibilities for such items.

XI. BOOKS AND RECORDS - The PROVIDER agrees during the Agreement Term (as applicable):

- a. To maintain books, records, and documents (including electronic storage media) in accordance with standard accounting procedures and practices which reflect all payments to the PROVIDER, by the COUNCIL under this Agreement.
- b. To assure that records pertaining to this Agreement or payments received by the PROVIDER from the COUNCIL, hereunder shall be subject at all reasonable times and upon reasonable prior request by the COUNCIL, for inspection, review, or audit by COUNCIL'S personnel and other personnel duly authorized by the COUNCIL, at any time during this Agreement period and for a period of five years after the termination of this Agreement. These documents shall be available at no cost to COUNCIL. Further, if any audit, litigation, claim, negotiation, or other action involving the records has been started before the expiration of the five year retention period, the records must be retained until completion of the action and resolution of all issues which arise from it.
- c. To maintain and file with the COUNCIL such progress reports as the COUNCIL may reasonably request within the period of this Agreement.
- d. To include these aforementioned audit and record keeping requirements of subparagraphs "XI-a through c" above, in all approved sub-contracts and assignments hereunder.
- e. Within seven calendar months of the close of its fiscal year, the PROVIDER must submit a certified independent financial audit of all its corporate activities and any accompanying management letter(s) to the COUNCIL. This audit shall be conducted consistent with the American Institute of Certified Public Accountants (AICPA), Standards for Non-Profit Organizations, or other mutually agreed upon standards. The audit must be performed by a firm licensed to perform audits in the State of Florida and be conducted in accordance with generally accepted auditing standards and standards established by the American Institute of Certified Public Accountants (AICPA). The audit will separately identify COUNCIL's

revenues, fees, donations, and expenditures by program. Sample due dates are provided below:

<u>Fiscal Year End Date</u>	<u>Audit Due Date</u>
March 31	November 1
June 30	February 1
August 31	April 1
September 30	May 1
December 31	August 1

i. If PROVIDER does not comply with the audit requirement, it is considered out of compliance. Consequences of failure to comply with the audit requirement will include, but may not be limited to, the following:

1. A PROVIDER not in compliance with the audit requirement at the beginning of any month will be assessed a financial penalty against their next month's reimbursement request. The audit will be due in the COUNCIL's office on the first working day of the month after seven calendar months have passed. The financial penalty will be the lesser of 5% of the approved monthly reimbursement or \$500. The amount of this fee cannot be reclaimed under future reimbursement requests. The fee will effectively reduce the total amount reimbursable on a program's budget. For example, a program with a \$120,000 budget that is assessed two \$500 fees will only be able to receive a maximum of \$119,000 for their budget year. The fee will be assessed on every PROVIDER program receiving funding from the COUNCIL. In other words, a PROVIDER with which the COUNCIL has Agreement(s) for four programs will be assessed four financial penalties for the same late audit.
2. The financial penalty fee assessment will be based on the due date of the audit and not on the timing of the next submitted reimbursement request. In other words, an audit received on the 12th day of the month that was due on the first working day of the month will be assessed a late fee even though the agency has not yet requested the monthly reimbursement.
3. The financial penalty fee described in number 1 above will be assessed monthly until the audit is received subject to provisions of number 4 below.
4. If an audit is not received within nine calendar months of the close of PROVIDER's fiscal year, the COUNCIL will send written notice to the PROVIDER to terminate the Agreement. The financial penalty fee will continue to be assessed during the termination process up to the point of termination or resolution.

5. In addition, if an audit is not received within nine calendar months of the close of PROVIDER's fiscal year and the Agreement with Provider has already been terminated or has expired, PROVIDER shall be prohibited from receiving any future funding from the COUNCIL until PROVIDER comes into full compliance with this paragraph including, but not limited to, the submission of the audit to the COUNCIL, and the COUNCIL in its sole discretion agrees to provide future funding to the PROVIDER.
 6. Agencies audited by the Florida Department of Financial Services are exempt from the audit late fees proscribed herein. Such agencies must submit an annual audit to the COUNCIL annually upon its completion.
- f. Programs funded for less than \$35,000 may request COUNCIL approval of a fiscal review in lieu of an audit. The review shall be performed consistent with the *American Certified Public Accounts (AICPA), Standards for Non-Profit Organizations*, or other mutually agreed upon standards. The COUNCIL is committed to assurances that all funds provided are being used consistent with its policies and in the best interest of the children and taxpayers.
 - g. The administration of the Agreement will be pursuant to the COUNCIL's "Fiscal Policy Manual" and "Technical Assistance Guide". The PROVIDER acknowledges receiving copies of both publications.
 - h. Regarding business and records directly related to this Agreement, PROVIDER shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the COUNCIL as provided under section 119.011(2), Florida Statutes, specifically agrees to:
 - i. Keep and maintain public records required by the COUNCIL to perform the service.
 - ii. Upon request from the COUNCIL's custodian of public records or designee, provide the COUNCIL with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the PROVIDER does not transfer the records to the COUNCIL.
 - iv. Upon completion of this Agreement, transfer, at no cost, to the COUNCIL all public records in possession of the PROVIDER or keep and maintain public records required by the COUNCIL to perform the service. If the PROVIDER transfers all public records to the COUNCIL upon completion of the Agreement, the PROVIDER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the PROVIDER keeps and maintains public records upon completion of this Agreement, the

PROVIDER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNCIL, upon request from the COUNCIL's custodian of public records or designee, in a format that is compatible with the information technology systems of the COUNCIL.

IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: CHILDREN'S SERVICES COUNCIL OF ST. LUCIE COUNTY, PHONE: (772) 408-1100, EMAIL: INFO@CSCSLC.ORG, 546 NW UNIVERSITY BLVD, SUITE 201, PORT ST. LUCIE, FL 34986.

XII. USE OF COUNCIL FUNDS FOR INHERENTLY RELIGIOUS PURPOSES PROHIBITED – In accordance with the Establishment Clause of the First Amendment to the United States Constitution and the No Aid provision of Article 1, Section 3 of the Constitution of the State of Florida, the use of COUNCIL funds for inherently religious purposes or to otherwise advance a religion is prohibited. The PROVIDER shall not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the services provided and funded by COUNCIL under this Agreement. The PROVIDER agrees, as set forth in this Agreement, to provide COUNCIL full access to its books and records, and to permit COUNCIL to monitor its activities and literature to ensure that COUNCIL funds are not being used for inherently religious purposes or to otherwise advance a religion. Failure to comply with this provision will result in a reduction or denial of a reimbursement request or termination of this Agreement for cause as determined in the sole discretion of COUNCIL.

XIII. INDEMNIFICATION - The PROVIDER agrees to indemnify and hold harmless the COUNCIL, its officers, employees and representatives from liability on account of any injuries, damages, omissions, commissions, actions, causes of actions, claims, suits, judgments and damages, including court costs and attorneys' fees (for all matters including administrative and litigation and appellate proceedings), accruing, as a result of services performed or not performed, or any negligent act or willful misconduct by the PROVIDER its officers, employees, representatives, subcontractors, or volunteers, or funding granted by the COUNCIL, or any action arising out of the operation of this Agreement.

XIV. INSURANCE – Prior to commencing any services under this Agreement, the PROVIDER shall provide one copy of certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The certificates shall clearly indicate that the PROVIDER has obtained insurance of the type, amount, and classification as required for compliance with this provision and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNCIL. Compliance with this provision shall not relieve

the PROVIDER of its liability and obligations under this Agreement.

- a. The PROVIDER shall maintain, during the life of this Agreement, commercial general liability, including contractual liability insurance in the minimum amount of \$500,000 per occurrence to protect the PROVIDER from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the PROVIDER or by anyone directly employed by or contracting with the PROVIDER.
- b. The PROVIDER shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect the PROVIDER from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the PROVIDER's ownership, use, and/or maintenance of automobiles, including rented automobiles, for the provision of services under this Agreement or arising out of this Agreement. Proof of appropriate automobile liability insurance is required for any PROVIDER employee or contractor who utilizes a privately owned automobile in order to provide the services detailed in its proposal to COUNCIL or arising there-from.
- c. The PROVIDER shall carry Workers' Compensation Insurance as required by Florida Statutes. In the event PROVIDER does not carry Workers' Compensation Insurance and chooses not to obtain same, then PROVIDER shall in accordance with Section 440.05, Fla. Stat., apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the COUNCIL.
- d. Depending on the services to be provided, the PROVIDER may be required to maintain, during the life of this Agreement, professional liability insurance or errors and omissions liability insurance in the minimum amount of \$500,000 per occurrence to protect the PROVIDER from claims which may arise from or relate to any services provided under this Agreement, whether such services are by the PROVIDER or by anyone directly employed by or contracting with the PROVIDER.
- e. The PROVIDER is also required to maintain any other insurance coverage deemed reasonably necessary during the life of this Agreement.
- f. Agencies of the State of Florida are exempt from specific insurance coverage levels. Such agencies must submit proof of statutory insurance coverage but are exempt from the specific levels of coverage proscribed herein.
- g. All insurance, other than Worker's Compensation and Professional Liability/Errors and Omissions (if required), to be maintained by the PROVIDER shall specifically include the COUNCIL as an "Additional Insured". Each renewal of the respective certificate of insurance provided for above shall be submitted to the COUNCIL upon receipt by PROVIDER. Failure to have and/or maintain the required insurance

under this Agreement shall not relieve PROVIDER of any obligation under this Agreement including without limitation indemnification of the COUNCIL.

XV. TRANSPORTATION - If children are being transported by, or on behalf of, the PROVIDER, whether in PROVIDER owned, rental or non-owned vehicles, the PROVIDER must comply with the following requirements:

- a. All drivers must have a valid driver's license with the appropriate class certification (if applicable). A copy of each driver's license must be on file with the PROVIDER.
- b. All vehicles must be insured as specified in Paragraph XIV, and
- c. A Transportation Permission Form must be signed by the parent or guardian of each child being transported. A copy of each Transportation Permission Form must be on file with the PROVIDER.

XVI. AUTHORITY - Each party represents and warrants to the other party that it has full power and authority to enter into and is fully licensed and able to perform its obligations under this Agreement, and this Agreement constitutes a legal, valid and binding obligation, enforceable in accordance with its terms.

XVII. APPROPRIATION OF FUNDS

- a. The COUNCIL's performance and obligation to pay under this Agreement are contingent upon an annual appropriation for its purpose by the COUNCIL. In the event funds to finance this Agreement become unavailable or are not appropriated, the COUNCIL, at the COUNCIL's sole discretion, may terminate the Agreement upon no less than twenty-four (24) hours' notice, in writing, to the PROVIDER.
- b. Notwithstanding anything herein to the contrary, the parties agree that the dollar amount set forth in paragraph II above may be reduced in the event that the COUNCIL determines that the PROVIDER will not spend the entire amount allocated by the September 30th fiscal year end. This determination may be made (a) based upon the COUNCIL's review of PROVIDER's program and its expenditure history or (b) during the course of reviewing a budget revision submitted by the PROVIDER pursuant to the COUNCIL's procedures. Before any such reduction becomes final, the PROVIDER will be notified in writing of the proposed action and shall have the opportunity to address the COUNCIL regarding the proposed reduction. The decision of the COUNCIL on this issue shall be within its sole discretion and shall be final.

XVIII. ENTIRE AGREEMENT - This Agreement contains all the terms and conditions agreed upon by the parties with respect to the subject matter of this Agreement. No other agreements regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

XIX. APPLICABLE LAW, VENUE AND REMEDIES - This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and venue for any litigation commenced relating to this Agreement shall be in St. Lucie County, Florida.

XX. AMENDMENTS - This Agreement may only be amended by mutual agreement of the parties, provided that the amendment is in writing and is executed by both parties.

XXI. ASSIGNMENT; SUCCESSORS AND ASSIGNS - The PROVIDER shall be prohibited from sub-contracting, selling, assigning, or otherwise transferring its interest in this Agreement to any other person, governmental entity, firm or corporation except upon prior written agreement of the COUNCIL, which COUNCIL may withhold in their sole discretion. The COUNCIL and the PROVIDER each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement.

XXII. WAIVER - No express or implied consent to or waiver of, any breach or default by the other party, in the performance of the obligations hereunder, shall be deemed or construed to be a consent to, or waiver of, any other breach or default in the performance by such hereunder. Failure on the part of either party to complain of any act of the other in default, irrespective of how long such failure continues, shall not constitute a waiver of a party's rights hereunder.

XXIII. SEVERABILITY; SURVIVABILITY; PREPARATION - If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of the Agreement shall survive its expiration or earlier termination. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

XXIV. NO THIRD-PARTY BENEFITS - The parties to this Agreement do not intend any provision of this Agreement to create any third-party beneficiaries or to confer any benefit or enforceable right upon anyone other than the parties hereto.

XXV. SOVEREIGN IMMUNITY - This Agreement shall not be construed as constituting a waiver of any rights to sovereign immunity granted to the COUNCIL under the laws or Constitution of the State of Florida. This Agreement shall not be construed as granting or extending the sovereign immunity to which the COUNCIL is entitled to the PROVIDER or any other third-party.

XXVI. OBTAINING ALTERNATIVE FUNDING SOURCES - The PROVIDER is responsible for identifying and obtaining funding sources to supplement COUNCIL's funding as provided herein. The PROVIDER shall submit written reports to the COUNCIL on a regular basis, on a no less than quarterly basis, setting forth the efforts that the PROVIDER has made to identify and secure alternative funding sources. The PROVIDER shall identify those funding sources which it has acquired since the commencement of this Agreement, as well as those alternative funding sources that it reasonably anticipates acquiring to replace or supplement some or all of the funding received from the COUNCIL pursuant to this Agreement.

XXVII. SPECIAL CONDITIONS – The following conditions apply to PROVIDER and all COUNCIL funded programs:

- a. PROVIDER shall distribute a press release announcing that it has been awarded funding by Children’s Services Council of St. Lucie County.
- b. PROVIDER shall, if it possesses the appropriate technology, provide a link between PROVIDER’s website and Children’s Services Council of St. Lucie County’s website (www.cscslc.org).
- c. PROVIDER shall include the Children’s Services Council of St. Lucie County logo and the following paragraph in all materials featuring programs funded by COUNCIL, including but not limited to, newsletters, press releases, brochures, flyers, homepage of website (linking logo to www.cscslc.org) or any other materials for dissemination to the media or general public:
 - i. The (insert program name) is funded by Children’s Services Council of St. Lucie County. The Children’s Services Council is a dedicated source of revenue established by voter referendum to improve the lives of children and families in St. Lucie County.
- d. PROVIDER shall display the “funded/supported by Children’s Services Council of St. Lucie County” sticker and 2’x3’ sign at its program location. The provider shall make reasonable attempts to display the 2’x3’ sign at all program events and off-site program promotion/recruitment venues.
- e. PROVIDER and all funded programs must participate and provide their agency’s information to 211 Palm Beach/Treasure Coast with updated information submitted at least twice a year during the Contract Term.

XXVIII. NOTICES - All notices, including changes in the following addresses, required to be given pursuant to this Agreement shall be given by mail, certified or registered, and return receipt requested, or by personal delivery, evidenced by a receipt signed by the recipient of such personal delivery, and shall be effective when received. If to the COUNCIL, address to the CEO of the Children’s Services Council of St. Lucie County, 546 NW University Blvd., Suite 201, Port St. Lucie, Florida, 34986. If to the PROVIDER, address to the Executive Director of Agency, [\[agency address\]](#).

XXIX. WAIVER OF JURY TRIAL AND REMEDIES. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

XXX. PUBLIC ENTITY CRIMES - PROVIDER acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply

on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Fla. Stat., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The PROVIDER will advise the COUNCIL immediately if it becomes aware of any violation of this statute.

XXXI. TIME - Time is of the essence in all respects under this Agreement.

XXXII. CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS - This Agreement consists of the terms and conditions herein and Provider's incorporated proposal. To the extent that there exists a conflict between this Agreement's terms and conditions and the Provider's incorporated proposal, the terms and conditions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

XXXIII. SCRUTINIZED COMPANIES

- a. PROVIDER certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel and shall execute the COUNCIL's "Provider Certification Form Regarding Scrutinized Companies". Pursuant to section 287.135, Florida Statutes, the COUNCIL may immediately terminate this Agreement at its sole option if the PROVIDER or any of its subcontractors are found to have submitted a false certification; or if the PROVIDER or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.
- b. The PROVIDER agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
- c. The PROVIDER agrees that the certifications in this section shall be effective and relied upon by the COUNCIL for the term of this Agreement, including any and all renewals.
- d. The PROVIDER agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the PROVIDER shall immediately notify the COUNCIL of the same.
- e. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

XXXIV. E-VERIFY - Pursuant to Section 448.095(25), Florida Statutes, the PROVIDER shall:

- a. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

Commented [JH2]: Sean: Please be aware that this provision applies to for profit companies only (see definition in Section 215.473(1)(d), Florida Statutes (as referenced in Section 287.135)). So it should be used when the Provider is a for profit company or if the Provider may use a subcontractor who is a for profit company.

- b. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien;
- c. Maintain copies of all subcontractor affidavits for the duration of this Agreement;
- d. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes; and
- e. Be aware that if the COUNCIL terminates this Agreement under Section 448.095(25)(c), Florida Statutes, the PROVIDER may not be awarded a public contract for at least 1 year after the date on which the Agreement is terminated and the PROVIDER will be liable for any additional costs incurred by the COUNCIL as a result of the termination of the Agreement.

XXXV. COUNTERPARTS - This document may be executed in one or more counterparts, each of which shall be deemed to be an original and such counterparts will constitute one and the same instrument. The parties agree to accept the execution and delivery of this document by electronic means, including but not limited to, e-signature, facsimile and Email, and shall treat the same as an original.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials, on the date first written above.



Sean Boyle, Chief Executive Officer
Children's Services Council of St. Lucie County

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Commented [JH3]: Sean: Regarding the execution of the Agreement by all parties, we often times include the following provision: "Counterparts: This document may be executed in one or more counterparts, each of which shall be deemed to be an original and such counterparts will constitute one and the same instrument. The parties agree to accept the execution and delivery of this document by electronic means, including but not limited to, facsimile and Email, and shall treat the same as an original." Not sure if this is how you want to do business.