

**Agreement Between  
The City of Ann Arbor on behalf of the 15<sup>th</sup> Judicial District Court  
and  
Dawn Inc.**

Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Ann Arbor (the "City"), a municipal corporation, on behalf of the 15<sup>th</sup> Judicial District Court (the "Court"), located at 301 E. Huron Street, Ann Arbor, MI 48104 and Dawn Inc., located at 6633 Stony Creek Road, Ypsilanti, MI 48197 (the "Contractor", EIN: 23-7318277).

In consideration of the promises below, the parties mutually agree as follows:

**ARTICLE I - DEFINITIONS**

Administering Service Area/Unit means the 15<sup>th</sup> Judicial District Court.

Contract Administrator means the 15<sup>th</sup> Judicial District Court Administrator, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

**ARTICLE II - DURATION**

This contract begins on October 1, 2014 and ends on September 30, 2015.

In the event the State Court Administrative Office extends the term of the grants funding this contract to any date beyond September 30, 2015, in that case the term of this agreement will be extended to a date concurrent with the extended grant termination date without further action by the parties.

**ARTICLE III – CONTRACTOR CONTACT INFORMATION**

Dawn Inc. dba Dawn Farm, 6633 Stony Creek Road, Ypsilanti, MI 48197. Phone: (734)485-8725. Project Official: James Balmer, President. Financial Official: Beverly Ghesquiere, Financial Coordinator.

**ARTICLE IV - SCOPE OF SERVICES**

The Contractor agrees to provide Service in connection with this contract in conformance with the following:

- A. The Contractor will provide alcohol assessments, testing, transitional housing and in-patient and out-patient substance abuse counseling and rehabilitative services to 15th Judicial District Court defendants referred to the Contractor by the Court's Sobriety Court and Mental Health Court dockets.
- B. The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.
- C. Quality of services under this Agreement shall be of the level of professional quality performed by experts regularly rendering these types of services. Determination of acceptable quality shall be made solely by the Contract Administrator.
- D. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services in this Agreement.
- E. The Contractor shall perform its Services in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

## **ARTICLE V - COMPENSATION**

Upon completion of the above services and submission of invoices the City will pay the Contractor an amount not to exceed One Hundred Nine Thousand Two Hundred Fifteen Dollars (\$109,215.00) for services rendered subject to the restrictions stated in Article V below. These funds will be disbursed as mutually agreed upon by the Court and the Contractor.

These services are funded from funds from the Supreme Court of Michigan State Court Administrative Office Michigan Drug Court Grant Program (SCAO-MDCGP) (\$89,615.00) and Michigan Mental Health Court Grant Program (SCAO-MMHCGP) (\$19,600.00).

The parties agree that the City on behalf of the Court will compensate the Contractor only to the extent that SCAO-MDCGP and SCAO-MMHCGP funds are actually awarded to and received by the Court.

The Contractor shall keep complete records of services provided so that the City or SCAO may verify invoices submitted by the Contractor. Such records shall be made available to the City or SCAO upon request and submitted in summary form with each invoice

## **ARTICLE VI – INSURANCE/INDEMNIFICATION**

- A. The Contractor shall procure and maintain during the life of this contract, such insurance policies, including those set forth below, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. Contractor shall require any retained subcontractors to agree to procure and maintain insurance coverage as specified in Article VI for any work performed in connection with this contract. The following insurance policies are required:
1. Professional Liability Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.
  2. Workers' Compensation Insurance in accordance with all state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:
    - i. Bodily Injury by Accident - \$500,000 each accident
    - ii. Bodily Injury by Disease - \$500,000 each employee
    - iii. Bodily Injury by Disease - \$500,000 each policy limit
  3. Comprehensive/Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:
    - i. \$1,000,000 - Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined.
    - ii. \$2,000,000 - Per Job General Aggregate
    - iii. \$1,000,000 - Personal and Advertising Injury
  4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be

\$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.
- B. Insurance required under subsection.A.3 and .A.4 of this contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.
- C. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation demonstrating it has obtained the above mentioned policies. Documentation must provide and demonstrate unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirement specified. For purposes of this contract "documentation" of insurance coverage is defined as a certificate of insurance and evidence of endorsement satisfactory to the City Attorney, of the City's additional insurance coverage by the Contractor and any subcontractor. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies and evidence of endorsement to the Administering Service Area/Unit at least ten days prior to the expiration date.
- D. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- E. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result from any acts or omissions by the Contractor or its employees and agents occurring in the performance of or breach in this Agreement.

#### **ARTICLE VII – CITY COMPLIANCE REQUIREMENTS**

- A. **Nondiscrimination.** The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion and political belief (except as it relates to a bona fide occupational qualification reasonably necessary to the normal operation of the business).

The Contractor agrees to comply with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner that provides equal employment opportunity.

The Contractor agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of the Contractor, will state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion and political belief.

The Contractor shall provide the services set forth in Article I without discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, marital status, physical handicap, or age.

- B. Living Wage. It is acknowledged by the parties that the Contractor is a "covered employer as defined in Chapter 23 of the Ann Arbor City Code and that it has been granted an exemption to compliance with the living wage provisions of Chapter 23 of the Ann Arbor City Code as specified in City Council Resolution R-13-189 enacted June 17, 2013. Contractor acknowledges and agrees to its continuing obligation to comply with the written compliance plan submitted as a pre-requisite to City Council grant of said exemption.

### **ARTICLE VIII – ASSURANCES**

The parties agree that the parties:

1. Shall establish safeguards to prohibit employees from using positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain;
2. Shall initiate and complete work within the applicable time frame after approval;
3. Shall assist SCAO with completion of compliance audits under the Single Audit Act Amendments of 1996;
4. Assure that no grant funds will replace state, local or tribal funds that would have otherwise been spent on positions and/or other items approved for expenditure of grant funds;
5. Assure that no grant funds will be used to influence an officer or employee of any agency or any legislator;
6. Certify that the Contractor is not currently disbarred, suspended, declared ineligible, has not been convicted for fraud, bribery or any other violation of any legal fiduciary duty within the last three years, is not presently under indictment for the foregoing offenses, and has not had a public transaction terminated for cause or default in the last three years;
7. Certify that the costs and expenses will be reasonable and necessary;
8. Certify that none of the Contractor's principals are employed by the City of Ann Arbor or by the Court.

### **ARTICLE IX - INTEREST OF CONTRACTOR AND CITY**

The Contractor promises that it has no interest which would conflict with the performance of services required by this contract. The Contractor also promises that, in the performance of this contract, no officer, agent, employee of the Court or of the City, or member of its governing bodies, may participate in any decision relating to this contract which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested or has any personal or pecuniary interest. However, this paragraph does not apply if there has been compliance with the provisions of Section 3 of Act No. 317 of the Public Acts of 1968 and/or Section 30 of Act No. 156 of Public Acts of 1851, as amended by Act No. 51 of the Public Acts of 1978, whichever is applicable.

## **ARTICLE X - COMPLIANCE WITH LAWS AND REGULATIONS**

The Contractor will comply with all federal, state and local regulations, executive orders and policies, including but not limited to all applicable OSHA/MIOSHA requirements, the Americans with Disabilities Act, the Intergovernmental Personnel Act of 1970, Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the Davis-Bacon Act, the Copeland Act, the Contract Work Hours and Safety Standards Act, the Hatch Act, environmental standards under the National Environmental Policy Act of 1969, the Coastal Zone Management Act of 1972, the State Clean Air Implementation Plans under the Clean Air Act of 1955, the Safe Drinking Water ACT OF 1974, the Endangered Species Act of 1973, the Wild and Scenic Rivers Act of 1968, the National Historic Preservation Act of 1966, Public Law 93-348 regarding human subjects involved in research, the Laboratory Animal Welfare Act of 1966, the Lead-Based Paint Poisoning Prevention Act, the Health Portability and Accountability Act of 1996 (HIPAA), the Drug-Free Workplace Act of 1988 and Executive Orders 11514, 11738, 11990 and 11988.

## **ARTICLE XI - CONFIDENTIALITY AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**

The Contractor must be in compliance with applicable confidentiality laws including the Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2, and the Michigan Mental Health Code, to the extent that this act and these regulations are pertinent to the services provided under this contract. These requirements include:

1. The Contractor must not share any protected health or other protected data and information provided by the STATE COURT ADMINISTRATIVE OFFICE or any other source that falls within HIPAA, 42 CFR Part 2, and /or the Michigan Mental Health Code requirements, except to a subrecipient subcontractor as appropriate under this contract.
2. The Contractor must require, in the terms and conditions of any subcontract, that the subrecipient subcontractor not share any protected health or other protected data and information from the SCAO or any other source that falls under HIPAA, 42 CFR Part 2, and /or Michigan Mental Health Code Requirements.
3. The Contractor must use protected data and information only for the purposes of this contract.
4. The Contractor must have written policies and procedures addressing the use of protected data and information that falls under HIPAA, 42 CFR Part 2, and /or Michigan Mental Health Code requirements. The policies and procedures must meet all applicable federal and state requirements including HIPAA, 42 CFR Part 2, and/or Michigan Mental Health Code regulations. These policies and procedures must include restricting access to the protected data and information by the Grantee's employees.
5. The Contractor must have a policy and procedure to report to the 15<sup>th</sup> Judicial District Court Contract Administrator any unauthorized use or disclosure of protected data and information that falls under HIPAA, 42 CFR Part 2, and /or Michigan Mental Health Code requirements of which the Contractor becomes aware.
6. Failure to comply with any of these contractual requirements may result in the termination of this contract.
7. In accordance with HIPAA, 42 CFR Part 2, and/or Michigan Mental Health Code requirements, the Contractor is liable for any claim, loss, or damage relating to its unauthorized use or disclosure of protected data and information received by the Contractor from the SCAO or any other source.

## **ARTICLE XII –REPORTING OF CONTRACTOR, RETENTION REQUIREMENTS**

All reports, estimates, memoranda and documents submitted by the Contractor must be dated and bear the Contractor's name and be in compliance with the grant guidelines.

All reports made in connection with these services are subject to review and final approval by the Chief Judge of the Court or his/her designee, and by the City Administrator or his/her designee.

The Chief Judge of the Court or his/her designee, and the City Administrator or his/her designee may review, monitor and inspect the Contractor's activities during the term of this contract to assure the administration and payment of grant funds is consistent with laws, regulations and contract provisions.

When applicable, the Contractor will submit a final, written report to the Chief Judge of the Court or his/her designee, and to the City Administrator or his/her designee.

After reasonable notice to the Contractor, the City or Court may review any of the Contractor's internal records, reports, or insurance policies pertaining to this contract. The Contractor shall grant access to SCAO, the Court, the City or to any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions. Additionally, the Contractor shall retain all required records for five (5) years after final payments and all other pending matters are closed.

## **ARTICLE XIII - OWNERSHIP OF DOCUMENTS AND PUBLICATION**

All reports programs, manuals, tapes, listings, documentation or any other work product developed as a result of this contract, and amendments thereto, shall belong to the SCAO and are subject to copyright or patent only by the SCAO. The SCAO shall have the right to obtain from the Court or Contractor original materials produced under this contract and shall have the right to distribute those materials.

During the performance of the services, the Contractor will be responsible for any loss of or damage to the documents while they are in its possession and must restore the loss or damage at its expense.

The SCAO shall have copyright, property, and publication rights in all written or visual material or other work products developed in connection with this contract. Neither the Court nor the Contractor shall publish or distribute any printed or visual material relating to the services provided under this contract without prior explicit permission of the SCAO.

## **ARTICLE XIV - ASSIGNS AND SUCCESSORS**

This contract is binding on the City and the Contractor, their successors and assigns. Neither the City nor the Contractor will assign or transfer its interest in this contract without the written consent of the other party.

## **ARTICLE XV - PAYROLL TAXES**

The Contractor is responsible for all applicable state and federal social security benefits and unemployment taxes for employees of the Contractor, and agrees to indemnify and protect the City and Court against such liability.

## **ARTICLE XVI - TERMINATION OF CONTRACT**

Either party may terminate the contract without cause by giving thirty (30) days written notice to the other party.

## **ARTICLE XVII - CHOICE OF LAW AND FORUM**

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit

Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

**ARTICLE XIII - EXTENT OF CONTRACT**

This contract represents the entire agreement between the parties and supersedes all prior representations, negotiations or agreements whether written or oral.

DAWN, INC.:

CITY OF ANN ARBOR:

By:

By:

\_\_\_\_\_  
Jim Balmer (Date)  
President

\_\_\_\_\_  
Christopher Taylor (Date)  
Mayor

By:

\_\_\_\_\_  
Jacqueline Beaudry (Date)  
City Clerk

APPROVED AS TO FORM & SUBSTANCE:

By:

\_\_\_\_\_  
Stephen K. Postema (Date)  
City Attorney

APPROVED AS TO SUBSTANCE:

By:

\_\_\_\_\_  
Steven D. Powers (Date)  
City Administrator

APPROVED AS TO SUBSTANCE:

By:

\_\_\_\_\_  
Elizabeth Pollard Hines (Date)  
Chief Judge  
15th Judicial District Court

APPROVED AS TO SUBSTANCE:

By:

\_\_\_\_\_  
Shryl Samborn (Date)  
Court Administrator  
15th Judicial District Court