

**TENNESSEE RYAN WHITE PART B
SERVICE PROVIDER CONTRACT**

This contract (the "Contract") is entered into this _____ day of _____, 2016, by and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and FRIENDS FOR LIFE, 43 N Cleveland St., Memphis, TN 38104, hereinafter referred to as "SERVICE PROVIDER".

WITNESSETH

WHEREAS, the COUNTY has the need for the provision of core medical and supportive services for People Living with Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) in the Memphis Transitional Grant Area (TGA); and

WHEREAS, the SERVICE PROVIDER has the expertise to provide such services; and

WHEREAS, the COUNTY approved the SERVICE PROVIDER as a single source provider on July 8, 2016; and

WHEREAS, the parties are desirous of entering into a contract setting forth the terms and conditions under which the SERVICE PROVIDER will provide said services; and

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

I. SCOPE OF WORK

- 1.1 This contract is for the provision of Ryan White Part B services to be performed by the SERVICE PROVIDER. The parties hereby agree that The COUNTY shall have no liability or obligation to SERVICE PROVIDER or any other person or entity with regard to any obligation not specifically permitted under the terms of the Contract and/or applicable law.
- 1.2 The COUNTY is designated by the State of Tennessee Department of Health as the Lead Agency to receive Ryan White Part B grant funds for the provision of HIV Core Medical Services for those eligible persons seeking services in Memphis, who are infected with HIV, as more fully described in the contract with the State of Tennessee, attached hereto as Exhibit A and fully incorporated by reference, as if stated herein verbatim.
- 1.3 SERVICE PROVIDER hereby agrees to fulfill all of the obligations set forth in the Client Eligibility Policy and Procedure, Exhibit B, and any obligations set forth herein that are applicable to this Contract
- 1.4 In any Services in which family, marital, or household considerations are, by statute or regulation, relevant for purposes of determining beneficiary eligibility or participation, SERVICE PROVIDER must treat same sex spouses, marriages, and households on the same terms as opposite sex spouses, marriages, and households, respectively. This includes individuals of the

same sex who have entered into marriages that are valid in the jurisdiction where performed, including any of the 50 states, the District of Columbia, or a U.S. territory or in a foreign country, regardless of whether or not the couple resides in a jurisdiction that recognizes same sex marriage.

- 1.5 SERVICE PROVIDER is required to take steps to ensure that people with limited English proficiency can meaningfully access health and social services. A program of language assistance should provide for effective communication between the service provider and the person with limited English proficiency to facilitate participation in, and meaningful access to, services. The obligations of recipients are explained on the OCR website at <http://www.hhs.gov/ocr/lep/revisedlep.html>.
- 1.6 The SERVICE PROVIDER is required to meet specific requirements regarding the monitoring of both their grant and their subrecipients/providers as detailed in the National Monitoring Standards for Ryan White Recipients.
- 1.7 The SERVICE PROVIDER agrees that at least one representative of the SERVICE PROVIDER will attend four (4) quarterly service provider meetings as scheduled by the COUNTY.
- 1.8 The SERVICE PROVIDER agrees that at least one representative of the SERVICE PROVIDER will attend four (4) quarterly quality management meetings as scheduled by the COUNTY. Furthermore, the SERVICE PROVIDER agrees to provide at least one (1) staff person to be a member of the State Ryan White Part B Quality Management Committee.

II. TERM AND COMPENSATION

- 2.1 This Contract shall become effective upon the date of the last signature of the parties hereto and continue through March 31, 2017.
- 2.2 The COUNTY agrees to compensate the SERVICE PROVIDER *FIVE HUNDRED SIXTY EIGHT THOUSAND AND 00/100 DOLLARS (\$568,000.00)* for the provision of the Services during the applicable grant period, as outlined in the Program and Fiscal Guidance attached hereto as Exhibit C and the Tennessee Department of Health, Communicable & Environmental Diseases and Emergency Preparedness, HIV/STD Programs, Ryan White Part B Program, Medical Services Fee Schedule attached hereto as Exhibit D. In no event shall COUNTY be responsible for services rendered outside the scope of the Program and Fiscal Guidance.

Upon mutual written agreement of the parties, COUNTY may amend SERVICE PROVIDER'S Program and Fiscal Guidance, as necessary, to increase and/or eliminate the service categories and the compensation amount for the provision of services during the term of the Contract.

In any event, the sum total of the Contract shall not exceed SIX HUNDRED SEVENTY FIVE THOUSAND AND 00/100 DOLLARS (\$675,000.00) during the term of this Contract which shall include all reimbursable expenses.

- 2.3 A monthly invoice of expenses, provided in Exhibit E, shall be submitted to the COUNTY by the

fifth (5th) working day of each month for reimbursement of actual expenses incurred from the prior month. The COUNTY shall pay such invoices within thirty (30) days of its receipt and approval of said invoices, providing timely receipt of reimbursement request, supporting documentation and continued appropriation of funds from the U.S. Department of Health and Human Services. The COUNTY is not obligated to pay, and will withhold from payment, any amounts the COUNTY has in dispute with the SERVICE PROVIDER based on SERVICE PROVIDER'S non-performance or negligent performance of any of the Services under this Contract.

- 2.4 All expenditures by the SERVICE PROVIDER hereunder must adhere to the line items contained in the SERVICE PROVIDER'S Contract. No budget revisions may be made without prior written approval of the COUNTY. The final expenditure report is due no more than 25 days following the end of the SERVICE PROVIDER Contract period on forms to be provided and approved by the COUNTY. The COUNTY will not be responsible for payment of claims later than the 25 days required for the final expenditure reports.
- 2.5 SERVICE PROVIDER shall not be permitted or authorized to incur costs beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of County contracts or purchases without prior, expressly written, appropriate authorization pursuant to County purchasing procedures and rules and regulations. County is not obligated to pay nor shall SERVICE PROVIDER be entitled to receive payments for contract fees and expenses incurred in violation of this provision.
- 2.6 These funds may not be used for the following: cash payments to intended recipients of services, purchasing or construction of real property, international travel, PreExposure Prophylaxis (PrEP) or non-occupational Post Exposure Prophylaxis (nPEP), or payments for any item or service to the extent that payment has been made, or reasonably can be expected to be made, with respect to that item or service under any State compensation program, insurance policy, Federal or State health benefits program or by an entity that provides health services on a prepaid basis (except for a program administered by or providing the services of the Indian Health Services).
- 2.7 These funds may not be used to make cash payments to intended clients of core medical or support services. This prohibition includes cash incentives and cash intended as payment for services. Where direct provision of the service is not possible or effective, store gift cards, vouchers, coupons, or tickets that can be exchanged for a specific service or commodity (e.g., food or transportation) must be used. Store gift cards that can be redeemed at one merchant or an affiliated group of merchants for specific goods or services that further the goals and objectives of these services are also allowable as incentives for eligible program participants. SERVICE PROVIDER are advised to administer voucher and store gift card programs in a manner which assures that vouchers or gift cards cannot be exchanged for cash or used for anything other than allowable goods or services, and that systems are in place to account for disbursed vouchers and store gift cards. Note: General use prepaid cards are considered "cash equivalent" and are therefore unallowable. Such cards generally bear the logo of a payment network, such as Visa, MasterCard, or American Express, and are accepted by any merchant

that accepts those credit or debit cards as payment. Gift cards that are cobranded with the logo of a payment network and the logo of a merchant or affiliated group of merchants are general use prepaid cards, not store gift cards, and therefore are also unallowable.

- 2.8 SERVICE PROVIDER must follow the guidance in all applicable HIV/AIDS Bureau Policy Notices and Program Letters to ensure compliance with programmatic requirements. See <http://hab.hrsa.gov/manageyourgrant/policiesletters.html>.
- 2.9 SERVICE PROVIDER is prohibited from using these funds to support Syringe Services Programs, inclusive of syringe exchange, access and disposal.
- 2.10 In accordance with Program Policy No. 1201, grant funds may not be used for outreach programs which have HIV prevention education as their exclusive purpose or broad scope awareness activities about HIV services that target the general public. <http://hab.hrsa.gov/manageyourgrant/pinspals/outreachpolicy2012.pdf>
- 2.11 SERVICE PROVIDER is required to use the following acknowledgement and disclaimer on all products produced by these funds:

“This project is/was supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) under grant number H89HA11464, Ryan White Part A HIV Emergency Relief Grant Program. This information or content and conclusions are those of the author and should not be construed as the official position or policy of, nor should any endorsements be inferred by HRSA, HHS or the U.S. Government.”

SERVICE PROVIDER is required to use this language when issuing statements, press releases, requests for proposals, bid solicitations, and other HRSA supported publications and forums describing projects or programs funded in whole or in part with this funding. Examples of publications include, but are not limited to, manuals, toolkits, resource guides, case studies and issues briefs.

III. GENERAL CONDITIONS

3.1 CONTROL

All Services by the SERVICE PROVIDER will be performed in a manner satisfactory to the COUNTY, and in accordance with the generally accepted business practices and procedures of the COUNTY. Neither SERVICE PROVIDER nor COUNTY nor any of their respective agents or employees shall control or have any right to control the manner and means by which the other party carries out its obligations under this Agreement, nor shall either party, its respective agents or employees, be liable to third parties for any act or omission of the other party.

3.2 SERVICE PROVIDER'S PERSONNEL

The SERVICE PROVIDER certifies that it presently has adequate qualified personnel to perform

all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the SERVICE PROVIDER. All efforts will be made by both parties to work cooperatively with each other and their personnel to develop corrective action plan(s) to address and correct unsatisfactory performance. If no improvement in performance after a reasonable length of time of corrective action plan implementation, then COUNTY may request removal of said SERVICE PROVIDER employee. Upon such request, SERVICE PROVIDER shall promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

The SERVICE PROVIDER and the COUNTY certify, by signing this Contract to the best of each party's respective knowledge that it, its principals, officers, directors and other officials:

- (a) Are not presently disbarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- (b) Have not within the past three years preceding this Contract been convicted of, or has had a civil judgment rendered against it (or its officers) for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or Service Provider Contract/contract under a public transaction; violation of a Federal or State antitrust statute or the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- (c) Have not within the past three years preceding this Contract award, application and/or proposal had a publicly (Federal, State, or local) funded contract terminated for cause of default.

3.3 INDEPENDENT STATUS

- a. Nothing in this Contract shall be deemed to represent that the SERVICE PROVIDER, or any of the SERVICE PROVIDER's employees or agents, are the agents, representatives, or employees of the COUNTY. The SERVICE PROVIDER is an independent contractor. Anything in this Contract which may appear to give the COUNTY the right to direct the SERVICE PROVIDER as to the details of the performance of the Services under this Contract or to exercise a measure of control over the SERVICE PROVIDER is solely for purposes of compliance with local, state and federal regulations and means that the SERVICE PROVIDER will follow the desires of the COUNTY only as to the intended results of the scope of this Contract. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purposes of carrying out the terms of this Agreement.
- b. It is further expressly agreed and understood by SERVICE PROVIDER that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that SERVICE PROVIDER has been retained by the

COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by SERVICE PROVIDER for the Services performed shall be on the SERVICE PROVIDER's letterhead.

3.4 REPORTS

SERVICE PROVIDER shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department. The reports shall include the items outlined in Exhibit C. Any such reports provided to the COUNTY shall be prepared with the understanding that the COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY. The COUNTY shall have the right to withhold future disbursement of funds under this Contract and any future Contracts until this provision has been met.

3.5 TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
 - (i) Either the SERVICE PROVIDER or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
 - (ii) SERVICE PROVIDER has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or
 - (iii) SERVICE PROVIDER has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of SERVICE PROVIDER'S assets.
- b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the SERVICE PROVIDER for SERVICE PROVIDER's failure to provide the Services specified under this Contract.
- c. This Contract may be terminated by the COUNTY without cause, breach or penalty by giving thirty (30) days written notice to the other party. In the event of such termination, the SERVICE PROVIDER shall be paid for all Services rendered prior to the Termination Date, provided the SERVICE PROVIDER shall have delivered to COUNTY such statements, accounts, reports and other materials as required under this

Contract; however, SERVICE PROVIDER shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date.

- d. Notwithstanding the above or any section herein to the contrary, SUB-GRANTEE shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by SUB-GRANTEE and the COUNTY may withhold any payments to SUB-GRANTEE for the purpose of setoff until such time as the exact amount of damages due the COUNTY from SUB-GRANTEE is determined.

3.6 COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to SERVICE PROVIDER pursuant to this Contract for any SERVICE PROVIDER's Services performed by the SERVICE PROVIDER in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the SERVICE PROVIDER to properly fulfill any of his obligations as set forth in this Contract.

3.7 SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the SERVICE PROVIDER from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the SERVICE PROVIDER's obligations to its transferors or subcontractors.
- b. If such subcontracts are approved by the COUNTY, they shall contain, at a minimum, sections of this Service Provider Contract pertaining to Conflicts of Interest, Lobbying, Nondiscrimination, Public Accountability, and Public Notice. Notwithstanding any use of approved subcontractors, the SERVICE PROVIDER shall be the prime contractor and shall be fully and completely responsible for all work performed.
- c. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

3.8 CONFLICT OF INTEREST

The SERVICE PROVIDER covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The SERVICE PROVIDER warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or contractor to the SERVICE PROVIDER in connection with any work contemplated or

performed relative to this Contract. Further, no funds hereunder may be contributed to the election campaign of any candidate running for elected office or to influence the outcome of any local, state or federal election.

3.9 CONTINGENT FEES

The SERVICE PROVIDER warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the SERVICE PROVIDER, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the SERVICE PROVIDER any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

3.10 EMPLOYMENT OF COUNTY WORKERS

The SERVICE PROVIDER will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

3.11 ACCESS TO RECORDS

Subject to all applicable laws concerning confidentiality of such data or records, during all phases of the work and Services to be provided hereunder, SERVICE PROVIDER agrees to permit duly authorized agents and employees of the COUNTY to enter SERVICE PROVIDER's offices for the purpose of inspections, reviews and audits of data and records maintained on patients who receive services under this Contract, upon reasonable notice during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The SERVICE PROVIDER will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request. COUNTY agrees to pay reasonable cost to SERVICE PROVIDER for providing copies.

To the extent required by Section 1861(v)(1)(I) of the Social Security Act, each party shall, upon proper request, all the United States Department of Health and Human Services, the Comptroller General of the United States, and their duly authorized representatives access to this Agreement and to all books, documents, and records necessary to verify the nature and extent of the costs of services provided by either party under this Agreement, at any time during the term of this Agreement and for an additional period of four (4) years following the last date services are furnished under this Agreement. If either party carries out any of its duties under

this Agreement through an agreement between it and an individual or organization related to it, that party to this Agreement shall require that a clause be included in such agreement to the effect that, until the expiration of four (4) years after the furnishing of services pursuant to such agreement, the related organization shall make available, upon request by the United States Department of Health and Human Services, the Comptroller General of the United States, or any of their duly authorized representatives, all agreements, books, documents, and records of such related organization that are necessary to verify the nature and extent of the costs of services provided under that agreement.

3.12 DISPUTE RESOLUTION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the SERVICE PROVIDER and the COUNTY will be referred to the Shelby County Contract Administrator or its duly authorized representative, whose decision regarding same will be final.

3.13 RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. SERVICE PROVIDER shall indemnify, defend, save and hold harmless the COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by the SERVICE PROVIDER its subcontractors, agents, employees or assigns. SERVICE PROVIDER is governed by the terms of the Tennessee Governmental Tort Liability Act, T.C.A. 29-20- 101 et seq. (“GTLA”), which limits the liability of SERVICE PROVIDER. The parties agree that SERVICE PROVIDER’s indemnification, if any, is limited to the maximum amount of liability established by the GTLA. This indemnification shall survive the termination or conclusion of this Contract.
- b. SERVICE PROVIDER expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the SERVICE PROVIDER shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.
- c. The COUNTY has no obligation to provide legal counsel or defense to SERVICE PROVIDER or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against SERVICE PROVIDER as a result of or relating to performance of the Services under this Contract.

- d. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against SERVICE PROVIDER as a result of or relating to performance of the Services under this Contract.
- e. SERVICE PROVIDER shall immediately notify the COUNTY of any claim or suit made or filed against SERVICE PROVIDER or its subcontractors regarding any matter resulting from or relating to SERVICE PROVIDER's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

3.14 GENERAL COMPLIANCE WITH LAWS

- a. The SERVICE PROVIDER certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
- b. The SERVICE PROVIDER is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the SERVICE PROVIDER agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

3.15 NON-DISCRIMINATION

The SERVICE PROVIDER hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the SERVICE PROVIDER on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The SERVICE PROVIDER shall upon request show proof of such non-discrimination and shall

post in conspicuous places available to all employees and applicants notices of non-discrimination.

Any recipient entity shall be subject to the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and regulations promulgated pursuant thereto. It shall develop a Title VI implementation plan with participation by protected beneficiaries as may be required by such law or regulations. To the extent applicable, such plan shall include Title VI implementation plans sub-recipients of federal funds through the entity. The SERVICE PROVIDER shall produce the plan upon request of the COUNTY. Failure to provide same shall constitute a material breach of contract.

3.16 ENTIRE AGREEMENT

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

3.17 AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

3.18 SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

3.19 NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

3.20 MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

3.21 SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the COUNTY. In the event sufficient funds for this Contract are not appropriated by THE COUNTY for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the SERVICE PROVIDER shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

3.22 TRAVEL EXPENSES

All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the COUNTY. Reimbursement to the SERVICE PROVIDER for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.

3.23 NON-LIABILITY FOR CONTRACTOR EMPLOYEE TAXES

Neither SERVICE PROVIDER nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide SERVICE PROVIDER's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from SERVICE PROVIDER's payments;
- b. Making state or federal unemployment insurance contributions on behalf of SERVICE PROVIDER or its personnel;
- c. Withholding state and federal income tax from payment to SERVICE PROVIDER;
- d. Making disability insurance contributions on behalf of SERVICE PROVIDER;
- e. Obtaining workers' compensation insurance on behalf of SERVICE PROVIDER or SERVICE PROVIDER's personnel.

3.24 INCORPORATION OF OTHER DOCUMENTS

- a. SERVICE PROVIDER shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of SERVICE PROVIDER

thereto, all of which are maintained on file within the Shelby County Purchasing Department and incorporated herein by reference.

- b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties; followed by the Request for Proposals; and lastly, the Response to Request for Proposals.

3.25 CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

The SERVICE PROVIDER shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.

3.26 RIGHT TO REQUEST REMOVAL OF SERVICE PROVIDER'S EMPLOYEES

The COUNTY may interview the personnel SERVICE PROVIDER assigns to COUNTY's work. All efforts will be made by both parties to work cooperatively with each other and their personnel to develop corrective action plan(s) to address and correct unsatisfactory performance. If no improvement in performance after a reasonable length of time of corrective action plan implementation, then COUNTY may request removal of said SERVICE PROVIDER employee. Upon such request, SERVICE PROVIDER shall promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

3.27 INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

3.28 DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by SERVICE PROVIDER, SERVICE PROVIDER understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by SERVICE PROVIDER due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

3.29 ORGANIZATION STATUS AND AUTHORITY

- a. SERVICE PROVIDER represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the State of Tennessee; it has the power and

authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

- b. The execution, delivery and performance of this Contract by the SERVICE PROVIDER has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of SERVICE PROVIDER, any provision of any indenture, agreement or other instrument to which SERVICE PROVIDER is a party, or by which SERVICE PROVIDER's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

3.30 INSURANCE REQUIREMENTS

- a. The SERVICE PROVIDER shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims which may arise out of or result from the SERVICE PROVIDER's operations under the Contract, whether such operations are performed by itself or by any SERVICE PROVIDER or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the SERVICE PROVIDER or SERVICE PROVIDER may be liable.
- b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insureds. The SERVICE PROVIDER will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements. All policies will provide for thirty (30) days written notice to COUNTY of cancellation or material change in coverage provided. If policy terms and conditions do not allow for notice COUNTY, SERVICE PROVIDER will immediately notify COUNTY and provide evidence or replacement coverage with no lapse.
 - i) Errors and Omissions/or Professional Liability coverage with limits of \$1,000,000.00 per occurrence/\$3,000,000.00 annual aggregate, indicating if coverage is on occurrence basis or claims made.
 - ii) Commercial General Liability coverage with minimum limits of \$1,000,000.00 per occurrence bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 general aggregate coverage, \$2,000,000.00 annual aggregate products/completed operations, indicating whether coverage provided on a claims-made or on an occurrence basis. Shelby County Government, its elected officials, appointees and employees will be named as additional insureds. The insurance shall

include coverage for the following:

- a. Premises/Operations;
 - b. Products/Completed Operations;
 - c. Contractual Liability;
 - d. Independent Contractors;
 - e. Personal and Advertising Injury.
 - f. Assault and Battery
 - g. Sexual Molestation
- iii) Workers Compensation and Employers' Liability Insurance – Workers' compensation statutory limits as required by Tennessee. This policy should include Employers' Liability coverage for \$500,000.00 each accident; \$500,000 - Disease - each employee; and Disease - \$500,000 policy limit. Contractor/provider waives its right of subrogation against Shelby County for any and all workers' compensation claims. Policy will include waiver of subrogation endorsement in favor of Shelby County Government.
- iv) Business Automobile Liability Insurance - minimum limit of \$1,000,000.00 each accident for property damage and bodily injury. Coverage is to be provided on all owned/leased, hired and non-owned autos. Shelby County Government, its elected officials, appointees and employees will be named as additional insureds.
- c. SERVICE PROVIDER shall provide County with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance or self- insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:
- Shelby County Government
Purchasing Department
160 N. Main, Suite 950
Memphis, TN
38103
- d. Upon termination or cancellation of any claims-made insurance currently in effect under this Contract, the SERVICE PROVIDER shall purchase an extended reporting endorsement and furnish evidence of same to the County.
- e. Any coverage applying to COUNTY shall be considered primary and contributory regardless of any insurance or self-insurance the COUNTY may maintain.
- f. If the SERVICE PROVIDER maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits

maintained by the SERVICE PROVIDER. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY as additional insureds.

- g. Any insurance company of the Provider shall be admitted and authorized to do business in the State of Tennessee and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" and a Financial Size Category of "X".

3.31 NOTICE

All notices, offers, acceptances, waivers, and other communications under this contract shall be in writing, and shall be deemed to have been both given and received when delivered to the party in person or, if mailed, when deposited in the U.S. Mails, by certified mail, postage pre-paid, with return receipt requested, to the party at the following address:

COUNTY: Shelby County (*Ryan White Program*)
160 N. Main St., Suite 250
Memphis, Tennessee 38103
Attn.: Ryan White Program Administrator

and

Shelby County Government
Contract Administration
160 N. Main St., Suite 950
Memphis, Tennessee 38103

VENDOR: Friends For Life
43 N Cleveland
Memphis, TN 38104
Attn: Diane Duke

or to such other address as any party, by notice to all others, may designate from time to time.

IV. ADDITIONAL CONDITIONS

4.1. CONFLICTS OF INTEREST.

The SERVICE PROVIDER warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, or consultant to the SERVICE PROVIDER in connection with any work contemplated or performed relative to this Contract.

The SERVICE PROVIDER acknowledges, understands, and agrees that this Contract shall be null and void if the SERVICE PROVIDER is, or within the past six months has been, an

employee of the State of Tennessee or if the SERVICE PROVIDER is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

4.2 LOBBYING

The SERVICE PROVIDER certifies, to the best of its knowledge and belief, that:

a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Sub-Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The SERVICE PROVIDER shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

4.3 NONDISCRIMINATION

The SERVICE PROVIDER hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Sub-Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The SERVICE PROVIDER shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

4.4 PUBLIC ACCOUNTABILITY

If the SERVICE PROVIDER is subject to *Tennessee Code Annotated*, Title 8, Chapter 4,

Part 4, or if this Contract involves the provision of services to citizens by the SERVICE PROVIDER on behalf of the State, the SERVICE PROVIDER agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the SERVICE PROVIDER shall display in a prominent place, located near the passageway through which the public enters in order to receive Contract supported services, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

4.5 PUBLIC NOTICE

All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the SERVICE PROVIDER shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the SERVICE PROVIDER shall be approved by the State.

4.6 DATA SECURITY

SERVICE PROVIDER warrants to the COUNTY and State that it agrees to meet the spirit and intent of all compliance requirements relating to the content of data accessed. This includes but is not limited to Payment Card Industry (PCI) data, as defined by PCI Security Standard v3.1, Protected Health Information (PHI), as defined under the in Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 160, Subpart A, §160.103 (45 C.F.R. §160.103), and Personally Identifiable Information (PII), as defined in the National Institute of Standards and Technology Special Publication 800-122 sections 2.1 and 2.2, in electronic and/or paper format. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance, including, but not limited to, Data Security - Vendor Acknowledgement agreement and Acceptable Use Policy, and to abide by SCG ITS security policies including, but not limited to, the SCG Network Security and Information Security policies.

SERVICE PROVIDER shall apply all vendor-issued security updates for system hardware and software components maintained by the SERVICE PROVIDER within 30 days of issuance.

Upon notification by the COUNTY, the SERVICE PROVIDER shall assure that all vulnerabilities specific to the systems maintained and identified by the COUNTY Approved Scanning Vendor (ASV), using the common vulnerability scoring system (CVSS), as not meeting compliance requirements, including but not limited to PCI Data Security Standards (DSS) and Health Insurance Portability and Accountability Act (HIPAA), are patched,

updated, or otherwise modified to assure they meet said compliance requirements.

The SERVICE PROVIDER shall promptly report to Information Technology Security Officer any breaches of Shelby COUNTY Government data and will implement immediate, appropriate corrective actions to contain and prevent recurrence.

- i) HIPAA - SERVICE PROVIDER warrants to the COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract. SERVICE PROVIDER warrants that it will cooperate with the COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. SERVICE PROVIDER will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.
- ii) PCI-DSS - SERVICE PROVIDER warrants to the COUNTY that it is familiar with the requirements established by the Payment Card Industry Security Standards Council for PCI Data Security Standards (PCI-DSS) and will comply with all applicable PCI-DSS requirements in the course of this Contract. CONTRACTOR agrees to indemnify and hold the COUNTY, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any breach of COUNTY or COUNTY customer credit card or identity information due to the SERVICE PROVIDER's actions.
- iii) Personally Identifiable Information (PII) - SERVICE PROVIDER warrants to the COUNTY that it will protect any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

4.7 RECORDS

The SERVICE PROVIDER shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the SERVICE PROVIDER, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The SERVICE PROVIDER's records shall be subject to audit at any reasonable time and upon reasonable

notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law. The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

4.8 NATIONAL DEFENSE AUTHORIZATION ACT

The requirements of 48 CFR section 3.908 (found at <http://www.ecfr.gov>) implementing section 828 of the National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub.L. 112239, enacted January 2, 2013) entitled "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections" apply to this award. This notice requires that grantees inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712 in the predominant native language of the workforce. The details of 41 U.S.C. 4712 can be found at <http://uscode.house.gov/browse.xhtml>.

4.9 TRAFFICKING VICTIMS PROTECTION ACT OF 2000

This award is subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C.7104). For the full text of the award term, go to <http://www.hrsa.gov/grants/trafficking.htm>.

4.10 MEDICARE AND MEDICAID ANTI-KICKBACK STATUE

SERVICE PROVIDER is subject to the strictures of the Medicare and Medicaid anti-kickback statute (42 U.S.C.1320a 7b(b) and should be cognizant of the risk of criminal and administrative liability under this statute, specifically under 42 U.S.C. 1320

7b(b) Illegal remunerations which states, in part, that whoever knowingly and willfully: (A) Solicits or receives (or offers or pays) any remuneration (including kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring (or to induce such person to refer) an individual to a person for the furnishing or arranging for the furnishing of any item or service, OR (B) In return for purchasing, leasing, ordering, or recommending purchasing, leasing, or ordering, or to purchase, lease, or order, any goods, facility, services, or itemFor which payment may be made in whole or in part under subchapter XIII of this chapter or a State health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

**APPROVED AS TO FORM
AND LEGALITY:**

Contract Administration/
Assistant County Attorney

SHELBY COUNTY GOVERNMENT

Mark H. Luttrell, Jr., Mayor

FRIENDS FOR LIFE

By: _____

Title: _____

CORPORATE ACKNOWLEDGMENT

**STATE OF TENNESSEE
COUNTY OF SHELBY**

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of _____ the within named bargainer, a corporation, and that he as such _____, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as _____.

WITNESS my hand and official seal at office this _____ day of _____, 2016.

Notary Public

My Commission Expires: _____

