

RESOLUTION NO. 2012 - 112

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE AN AGREEMENT FOR PRE-LITIGATION DISPUTE RESOLUTION SERVICES.

RECITALS

WHEREAS, the County desires to enter into an agreement with County Court Mediation Services ("CCMS") to provide programs and services aimed at guiding parties involved in a dispute toward a mutually satisfactory agreement that may prevent further adverse actions; and

WHEREAS, CCMS facilitates communication between disputing parties to reach a mutually satisfactory agreement and prevent further adverse actions; and

WHEREAS, providing such programs and services may save County citizens the expense, delay and inconvenience of court appearances, thereby serving a public purpose; and

WHEREAS, the County has reviewed the terms, provisions, conditions and requirements of the draft agreement (attached hereto, an incorporated herein) and finds that entering into such an agreement serves a public purpose.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized execute a final agreement on behalf of the County in substantially the same form and format as the draft agreement attached hereto to provide pre-litigation dispute resolution services.

Section 3. ~~To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.~~

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 3rd day of April, 2012.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: [Signature]
Chair

ATTEST: Cheryl Strickland, Clerk

By: [Signature]
Deputy Clerk



RENDITION DATE 4/5/12



CONTRACT AGREEMENT FOR DISPUTE RESOLUTION SERVICES

This Contract Agreement ("Agreement") made and entered this _____ day of _____ 2011, shall be the complete and binding agreement by and between St. Johns County ("County"), a political subdivision of the State of Florida, whose address is 500 San Sebastian View, St. Augustine, Florida, 32084, and County Court Mediation Services ("CCMS"), a private, non-profit agency that provides mediation services to persons living in the Seventh Judicial Circuit, whose address is 250 North Beach Street, Suite 104A, Daytona Beach, Florida, 32114.

Recitals

WHEREAS, the County seeks to provide programs and services aimed at guiding parties involved in a dispute toward a mutually satisfactory agreement that may prevent further adverse actions; and

WHEREAS, providing such programs and services may save County citizens the expense, delay and inconvenience of court appearances, thereby serving a public purpose; and

WHEREAS, CCMS facilitates communication between disputing parties to reach a mutually satisfactory agreement and prevent further adverse actions; and

WHEREAS, both the County and CCMS seek to enter into an agreement to provide local citizens the option of participating in pre-litigation dispute resolution.

Now, therefore, in consideration of the mutual understandings and agreements set forth herein, the County and CCMS agree as follows:

I. Term.

The term of this Agreement shall begin on _____, 20__ ("Effective Date"), and shall end at 11:59 p.m., EST, on _____, 20__ ("Expiration Date"), unless earlier terminated as provided herein.

II. Termination.

This Agreement may be terminated by either the County or CCMS, with or without cause, upon no less than sixty (60) days prior written notice to the other party or at the option of the County, immediately in the event CCMS fails to fulfill any of the obligations contained herein.

III. Scope of Services.

CCMS shall provide guidance to parties involved in a dispute toward a mutually satisfactory agreement; and to facilitate communication between disputing parties to assist in reaching an agreement that may prevent further adverse action.

IV. Management.

CCMS shall perform the Scope of Services at the direction and under the management of the County Attorney.

V. Facilities.

The County shall provide to CCMS adequate conference room space in the County Administration Building, located at 500 Sebastian View, St. Augustine, Florida, 32084. The County shall further provide to CCMS access to a photocopier.

VI. Compensation and Billing.

CCMS shall provide the Services described herein at no cost to the County.

VII. Availability of Funds.

The County's performance under this Agreement is subject to the availability of funds lawfully appropriated for such purpose. The County makes no express commitment to provide such funds in any given County Fiscal Year. Moreover, it is expressly noted that CCMS cannot demand that the County provide any such funds in any given County Fiscal Year.

VIII. Reporting Requirements.

CCMS shall provide to the County a quarterly report including the following:

- (1) A list of goals, objectives and service levels projected to benefit the County during the Term of this Agreement;
- (2) Statistical data showing monthly achievements and service to the County (i.e., number of cases, types of cases, outcome of hearings, etc.);
- (3) Statistical data showing cumulative achievements and service to the County to date;
- (4) Percentage of goals and objectives achieved to date;
- (5) A narrative assessment of progress toward accomplishing goals and objectives for service to the County;
- (6) A financial report of receipts and expenditures; and
- (7) Any additional information requested by the County to assess performance of the Scope of Services and effectiveness of the services provided.

IX. Insurance Requirements.

CCMS shall not commence work under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by the County. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. CCMS shall furnish Certificates of Insurance to the County prior to the commencement of operations. The Certificates shall clearly indicate that CCMS has obtained insurance of the type, amount, and classification as required by the County and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County. Certificates shall specifically include St. Johns County, 500 San Sebastian View, St. Augustine, Florida, 32084 as Additional Insured for all lines of coverage except Professional Liability and Workers' Compensation. A copy of the endorsement must accompany the certificate and a brief description of operations and reference to this Agreement and corresponding St. Johns County Resolution Number shall also be listed on the Certificate. Compliance with the foregoing requirements shall not relieve CCMS of any liability and obligation under this Agreement.

For the entire Term of this Agreement, CCMS shall, at its sole expense, secure and maintain insurance coverage in the following types and amounts provided: Comprehensive General Liability Insurance in the amount of \$1,000,000 per occurrence, \$2,000,000 aggregate, to protect CCMS from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by CCMS or by anyone directly employed by or contracting with the CCMS.

CCMS shall maintain during the Term of this Agreement, Comprehensive Automobile Liability Insurance in the amount of \$300,000 combined single limit for bodily injury and property damage liability to protect the CCMS from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and non-owned automobiles, including rented/hired automobiles whether such operations be by the CCMS or by anyone directly or indirectly employed by a CCMS.

The CCMS shall maintain during the Term of this Agreement, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by the law for all of its employees (if three or more) per Florida Statute 440.02.

X. Indemnification.

To the extent permitted by law, CCMS shall indemnify, defend, and hold the County harmless from all claims (including tort-based, contractual, injunctive, and/or equitable), losses (including property (personal and/or real), and bodily injury), costs (including attorneys' fees), suits, administrative actions, arbitration, or mediation originating from, connected with, or associated with, or growing out of (directly and/or indirectly), CCMS's performance of the Scope of Services.

XI. Notices.

All official notices to the County shall be delivered either by hand (receipt of delivery required), or by certified mail to:

County Administrator
St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

With a copy to:

County Attorney
St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

All official notices to CCMS shall be delivered either by hand (receipt of delivery required), or by certified mail to:

Marie C. Joy, Executive Director
County Court Mediation Services
250 North Beach Street
Suite 104A
Daytona Beach, Florida 32114

All other correspondence, not classified as official notices, may be delivered, disseminated, and/or submitted by any means acceptable to both parties, specifically including, faxing, e-mailing, or text messaging.

XII. Access to Records.

The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State or Federal law. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

XIII. Review of Records.

As a condition of entering into this Agreement, and to ensure compliance, especially as it relates to any applicable law, rule, or regulation, CCMS authorizes the County to examine, review, inspect and/or audit the books and records, in order to determine whether compliance has been achieved with respect to the terms, conditions, provisions, rights, and responsibilities noted in this Agreement. It is specifically noted that CCMS is under no duty to provide access to documentation, not related to this Agreement or protected by Local, State, or Federal law.

XIV. Permits and Licenses.

To the extent that CCMS is required to secure, obtain, acquire, and/or maintain permits, certificates, authorizations, and/or licenses, in order to perform the Scope of Services noted in this Agreement, then CCMS, at its sole expense, shall be responsible for securing, obtaining, acquiring, and/or maintaining any, and all, permits, certificates, authorizations, and/or licenses required by Federal, State, and/or County law, rule, regulation, or ordinance.

XV. Amendments.

Both the County and CCMS acknowledge that this Agreement constitutes the complete agreement and understanding of the parties. Further, both the County and CCMS acknowledge that any change, amendment, modification, revision, or extension of this Agreement shall be in writing, and shall be executed by duly authorized representatives of both the County and CCMS.

XVI. Procedure for Achieving Assignment.

In light of the scope and rationale for this Agreement, neither the County, nor CCMS may assign, transfer, and/or sell any of the rights set forth herein without the express written approval of the other party. Should either the COUNTY, or CCMS, assign, transfer, and/or sell any of the rights of this Agreement without such prior written approval of the other party, then such action on the part of either the County or CCMS shall result in automatic termination of this Agreement without further notice or action required on the part of the other party.

XVII. Independent Contractor Relationship.

CCMS is, and shall be, in the performance of all work, services, and activities under this Agreement an Independent Contractor, and not an employee, agent, official, or servant of the County. As such, neither CCMS, nor any employees, agents, officials, servants, nor subcontractors of CCMS are eligible for any benefits afforded employees or officials of the County. CCMS does not have the power or the authority to bind (legally or equitably, in any manner whatsoever the COUNTY, in any promise, agreement, or representation, other than as specifically provided for in this Agreement.

XVIII. Relationship of the County and CCMS.

This Agreement shall not be deemed or construed to create any agency relationship, partnership (limited or otherwise), association, or joint venture between the County and CCMS.

XIX. No Third Party Beneficiaries.

Both the County, and CCMS explicitly agree, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person and/or entity.

XX. Governing Law and Venue.

This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

XXI. Severability.

If any word, phrase, sentence, part, subsection, section, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force, and effect.

XXII. Headings.

All paragraphs and descriptive headings of paragraphs noted in this Agreement are inserted for the convenience of the parties only, and shall not affect or control the interpretation of this Agreement.

XXIII. Authority to Execute.

Each party covenants to the other party that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Agreement to be executed on the day and year written above.

St. Johns County

County Court Mediation Services

By: _____
Chair

By: _____
Executive Director

Date of Execution

Date of Execution

Approved as to form and legal
sufficiency.

By: _____
County Attorney

Date of Execution

Cheryl Strickland, Clerk of Courts

By: _____ Seal
Deputy Clerk

Date of Execution

DRAFT