

1 **AGREEMENT**

2 **BETWEEN**

3 **MODEL CITIES LEGAL SERVICES, INC.**

4 **AND**

5 **THE CITY OF ANN ARBOR**

6 **FOR**

7 **PROFESSIONAL LEGAL SERVICES**

8
9 The City of Ann Arbor, a Michigan municipal corporation, having its offices at
10 100 North Fifth Avenue, Ann Arbor, Michigan 48104 ("City"), and Funkhouser,
11 Isley and Lewis, P.L.C., dba Model Cities Legal Services, Inc. ("MCLS"), a
12 Michigan Corporation, with its address at 202 E. Huron Street, Ann Arbor,
13 Michigan, agree as follows on this _____ day of _____, 20__.

14 MCLS agrees to provide professional legal services to the City under the
15 following terms and conditions:

16 1) **DEFINITIONS**

- 17 a) Administering Department means 15th Judicial District Court (the
18 "Court").
19 b) Contract Administrator means Keith Zeisloft or whomever the
20 Contract Administrator may from time to time designate.
21 c) Project means Court-Appointed Indigent Legal Representation.

22 2) **DURATION**

- 23 a) This agreement shall become effective on July 1, 2010, through
24 June 30, 2011, unless otherwise terminated as provided for in
25 this Agreement.

26 3) **SERVICES**

- 27 a) MCLS agrees to provide professional legal services to represent
28 indigent persons when appointed by the Court for this purpose in
29 connection with the Project as described in Exhibit A.
30 b) The City retains the right to make changes to the quantities of
31 service within the general scope of the agreement at any time by
32 a written order. If the changes add to or deduct from the extent of
33 the services, the contract sum shall be adjusted accordingly. All
34 such changes shall be executed under the conditions of the
35 original agreement. MCLS and the Contract Administrator agree
36 to monitor the number of court-appointments periodically during
37 the contract term and modify projections for needed services
38 accordingly. MCLS acknowledges if funds to enable the City to
39 effect continued payment under this Agreement in connection with

40 any change to the quantities of service must be appropriated by
41 City Council, the implementation of and effective date for any
42 such change is subject to the appropriation of funds for the
43 Project.

44 c) Quality of services under this agreement shall be of the level of
45 professional quality performed by experts regularly rendering this
46 type of service.

47 d) Determination of acceptable quality shall be made solely by the
48 Contract Administrator.

49 e) MCLS shall perform its Services for the Project in compliance with
50 all statutory, regulatory and contractual requirements now or
51 hereafter in effect as may be applicable to the rights and
52 obligations set forth in this Agreement.

53

54 4) COMPENSATION OF MCLS

55 a) MCLS shall be paid on the basis of time spent and materials used
56 for each representation when so appointed by the Court, pursuant
57 to the schedule shown in Exhibit B.

58 b) Payment shall be made monthly following receipt of invoices
59 submitted by MCLS, and approved by the Contract Administrator.

60 c) The Court's Chief Judge may authorize payments that exceed the
61 per case maximums shown in Exhibit B based on a written request
62 from MCLS documenting the reasons for the exceptions.

63 d) The amount paid MCLS under this contract shall not exceed One
64 Hundred Eighty Thousand Dollars (\$180,000.00).

65 e) MCLS shall keep complete records of time spent on Court
66 appointments so that the City may verify invoices submitted by
67 MCLS. Such records shall be made available to the City upon
68 request and submitted in summary form with each invoice, on a
69 form approved by the Michigan State Court Administrative Office.

70 5) INSURANCE

71 a) During the term of this agreement, MCLS agrees to procure and
72 maintain in effect a policy or policies of professional liability
73 insurance protecting MCLS and its principals and employees in an
74 amount not less than One Million Dollars (\$1,000,000).

75 b) During the term of this agreement, MCLS agrees to procure and
76 maintain in effect insurance policies in the amounts and with the
77 types of coverage shown below:

78 1. Workers Compensation Insurance in the form and amount
79 required by Michigan law.

80 2. Commercial General Liability Insurance on an "Occurrence
81 Basis" with limits of liability not less than One Million Dollars
82 (\$1,000,000) per occurrence and/or aggregate combined

83 single limit, Personal Injury, Bodily Injury and Property
84 Damage.

- 85 c) Certificates showing that MCLS has the required insurance shall
86 be filed with the Administering Department before any services
87 are performed.
- 88 d) Certificates shall provide not less than thirty (30) days prior
89 written notice to the Administering Department of cancellation,
90 non-renewal, reduction in the amount of insurance or material
91 change of terms of the policy.
- 92 e) The certificates for the insurance outlined in Article 5(c) and (d)
93 shall name the City as an additional insured party and provide for
94 notice to the Administering Department during the term of this
95 contract for any action taken in accordance with this provision.
- 96 f) If any of the above coverages expire by their terms during the
97 term of this agreement, MCLS shall deliver renewal certificates
98 and/or policies to the Administering Department at least ten (10)
99 days prior to the expiration date.
- 100 g) To the fullest extent permitted by law, MCLS shall indemnify,
101 defend and hold the City, its officers, employees and agents
102 harmless from all suits, claims, judgments and expenses including
103 attorney's fees resulting or alleged to result, in whole or in part,
104 from any negligent, grossly negligent, reckless and/or intentional
105 wrongful or tortious acts or omissions by MCLS or its principals,
106 employees and agents occurring in the performance of or in
107 breach of this agreement.

108 6) NONDISCRIMINATION

109 MCLS agrees to comply, and to require its principals, employees
110 and agents to comply, with the nondiscrimination provisions of
111 MCL 37.2209. MCLS further agrees to comply with the
112 nondiscrimination provisions of Chapter 112 of the Ann Arbor City
113 Code and to assure that applicants are employed and that
114 employees are treated during employment in a manner which
115 provides equal employment opportunity.

116 7) WARRANTIES BY MCLS

- 117 a) MCLS warrants that the quality of its services under this
118 agreement shall conform to the level of professional quality
119 performed by experts regularly rendering this type of service.
- 120 b) MCLS warrants that it has all the skills, experience, and
121 professional licenses necessary to perform the services it is to
122 provide pursuant to this agreement.
- 123 c) MCLS warrants that it has available, or will engage, at its own
124 expense, sufficient trained employees to provide the services
125 specified in this agreement.

126 d) MCLS warrants that it is not, and shall not become overdue or in
127 default to the City for any contract, debt, or any other obligation
128 to the City including real and personal property taxes.

129 8) TERMINATION OF AGREEMENT

130 a) This agreement may be terminated by either party without further
131 notice in the case of a breach of this agreement by the other
132 party, if the breaching party has not corrected the breach within
133 fifteen (15) days after notice of the breach.

134 b) The City may terminate this agreement if it decides not to proceed
135 with the Project by notice pursuant to Article 11.

136 c) If the Project is terminated for reasons other than the breach of
137 the agreement by MCLS, MCLS shall be compensated for work
138 performed and authorized pursuant to notification of termination.

139 9) OBLIGATIONS OF THE CITY

140 a) The City agrees to give MCLS access to the Project area and
141 other City-owned or leased properties as required to perform the
142 necessary services under this agreement.

143 b) The City shall notify MCLS of any defects in the services of which
144 the Contract Administrator has actual notice.

145 10) ASSIGNMENT

146 a) MCLS shall not subcontract or assign any portion of the services
147 without prior written consent from the Contract Administrator.

148 b) MCLS shall retain the right to pledge payment(s) due and payable
149 under this agreement to third parties.

150 11) NOTICE

151 a) All notices and submissions required under this agreement shall
152 be by personal delivery or by first-class mail, postage prepaid, to
153 the address stated in this agreement or such other address as
154 either party may designate by prior written notice to the other.
155 Notice shall be considered delivered under this agreement when
156 personally delivered to the Contract Administrator or placed in the
157 U.S. mail, postage prepaid to the Administering Department, care
158 of the Contract Administrator.

159 12) CHOICE OF LAW AND FORUM

160 This Agreement will be governed and controlled in all respects by the laws of the
161 State of Michigan, including interpretation, enforceability, validity and
162 construction, excepting the principles of conflicts of law. The parties submit to
163 the jurisdiction and venue of the Circuit Court for Washtenaw County, State of
164 Michigan, or, if original jurisdiction can be established, the United States District
165 Court for the Eastern District of Michigan, Southern Division, with respect to any
166 action arising, directly or indirectly, out of this Agreement or the performance or
167 breach of this Agreement. The parties stipulate that the venues referenced in
168 this Agreement are convenient and waive any claim of non-convenience.

- 169 13) CONFLICT OF INTEREST
170 a) MCLS certifies it has no financial interest in the services to be
171 provided under this agreement other than the compensation
172 specified herein.
173 b) MCLS further certifies that it presently has no personal or
174 financial interest, and shall not acquire any such interest, direct
175 or indirect, which would conflict in any manner with its
176 performance of the services under this agreement.

- 177 14) LIVING WAGE
178 a) MCLS is a “covered employer” as defined in Chapter 23 of the Ann
179 Arbor City Code and agrees to comply with the living wage
180 provisions of Chapter 23 of the Ann Arbor City Code.
181 b) MCLS agrees to pay those employees providing services under
182 this Agreement a “living wage,” as defined in Section 1:815 of the
183 Ann Arbor City Code; to post a notice approved by the City of the
184 applicability of Chapter 23 in every location in which regular or
185 contract employees providing services under this agreement are
186 working; to maintain records of compliance; if requested by the
187 City, to provide documentation to verify compliance; to take no
188 action that would reduce the compensation, wages, fringe
189 benefits, or leave available to any employee or person contracted
190 for employment in order to pay the living wage required by Section
191 1:815; and otherwise to comply with the requirements of Chapter
192 23.

- 193 15) SEVERABILITY OF PROVISIONS
194 a) Whenever possible, each provision of this agreement will be
195 interpreted in a manner as to be effective and valid under
196 applicable law. However, if any provision of this agreement or the
197 application of any provision to any party or circumstance will be
198 prohibited by or invalid under applicable law, that provision will be
199 ineffective to the extent of the prohibition or invalidity without
200 invalidating the remainder of the provisions of this agreement or
201 the application of the provision to other parties and
202 circumstances.

- 203 16) EXTENT OF AGREEMENT
204 a) This agreement represents the entire understanding between the
205 City and MCLS and supersedes all prior representations or
206 agreements whether written or oral.
207 b) Neither party has relied on any prior representations, of any kind
208 or nature, in entering into this agreement.
209 c) This agreement may be altered, amended or modified only by
210 written amendment signed by MCLS and the City.

211

For MCLS

By _____

Brant L. Funkhouser, Jr.

Approved as to form and content

Stephen K. Postema, City Attorney

For City of Ann Arbor

By: _____

John Hieftje, Mayor

By _____

Jacqueline Beaudry, City Clerk

Approved as to substance

Roger Fraser, City Administrator

Keith Zeisloft, Administrator
15th Judicial District Court

EXHIBIT A

SCOPE OF SERVICES

Provide full and complete representation of indigent defendants upon receipt of an appointment from a 15th Judicial District Court judge or magistrate, appear at all hearings with the client and throughout the case, and zealously represent the client in a manner consistent with the standards established by the Michigan Rules of Professional Conduct.

EXHIBIT B
PAYMENT SCHEDULE

- 1) Payment rate will be Ninety Dollars (\$90.00) per hour.
- 2) Except as provided in (7), maximum payment of Five Hundred Dollars (\$500) for cases resolved before trial.
- 3) Except as provided in (7), a maximum payment of One Thousand Dollars (\$1,000) for cases resolved by trial.
- 4) Attorneys handling one defendant with multiple charges arising from the same offense may, subject to the limitations of (2) and (3):
 - a) charge the Court once at the allowance of \$90/hour for the length of the event or,
 - b) the attorney can divide the \$90/ hour allowance among all the charges so the total does not exceed the \$90 hourly rate.
- 5) Attorneys handling one defendant with multiple cases filed with different offense dates, or different witnesses, may be allowed, at the discretion of the judge, to charge the hourly allowance on each case filed, subject to the limitations of (2) and (3).
- 6) "Cases resolved by trial" shall mean dispositions entered after a trial has started and the first witness has been sworn, without regard to how the disposition is actually reached.
 - a) Cases disposed of by plea prior to the actual start of the trial as defined above will be considered to have been disposed of "before trial."
- 7) In cases where the representation exceeds the allowable maximum, MCLS shall file with the Chief Judge a request for payment based on the hourly rate which shall include documentation to explain the reason(s) or special circumstance(s) that caused the representation to exceed the maximum as allowed by the agreement.