

PUBLIC DEFENDER SERVICES CONTRACT

The **COUNTY OF WASHTENAW**, a municipal corporation, with offices located in the County Administration Building, 220 N. Main Street, Ann Arbor, Michigan 48107, hereinafter identified as the "**COUNTY**"; and the **CITY OF ANN ARBOR**, with offices located at 301 East Huron Street, Ann Arbor Michigan 48104, hereinafter identified as "**CITY**" in consideration of mutual promises and covenants hereinafter set forth agree as follows:

The parties desire to enter into a contract for the purposes of providing public defense services in compliance with Michigan Indigent Defense Commission standards and as identified in the plan and grant application accepted and approved by the MIDC for grant fiscal year 2020-2021 and to set forth the terms, conditions, and obligations of the parties.

ARTICLE I SCOPE OF SERVICE

The COUNTY will provide indigent public defense service to the CITY as described by the Michigan Indigent Defense Commission hereinafter identified as "**MIDC**" through the approved grant fiscal year 2020-2021 Washtenaw County Compliance plan. Specifically, the public defense services will address MIDC standards 1-4, which are: Training, Attorneys at First Appearance, Investigators and Experts, and Initial Interviews. See attached, the approved Washtenaw County MIDC Compliance plan and MIDC Standards 1-4.

ARTICLE II COMPENSATION

The CITY will contribute their FY2020 certified local share to the County Indigent Defense Fund in the amount of \$ 206,304.79.

As of the date of this contract the COUNTY will be responsible for providing public defense service to all indigent and partially indigent criminal defendants that appear in the 15th District Court with criminal matters and matters that are in bench warrant status.

The parties shall be obligated to contribute only their MIDC certified local share toward the expense for said services under this Agreement, as stated in the MIDC Compliance Plan and the MIDC statute.

ARTICLE III TERMS OF THE AGREEMENT

The terms of this Agreement will consist of the COUNTY providing public defense services for all indigent and partially indigent defendants in the 15th District Court located in the City of Ann Arbor. This Agreement begins on October 1, 2020 and ends on September 30, 2021. The terms of this Agreement shall apply from October 1, 2020, through any extension, unless otherwise terminated or extended as provided therein.

In the event that the Michigan Indigent Defense Commission extends the term of the grant funding this contract to any date beyond September 30, 2021, then the term of this agreement will be extended to a date concurrent with the extended grant termination date without further action by the parties, unless otherwise terminated or extended as provided therein.

The COUNTY as stated in the Compliance Plan will be responsible for the administration of the MIDC Grant

The CITY shall collaborate with and act in conformance with the COUNTY in submitting and complying with the standards, conditions, requirements and statutes promulgated by the Michigan Indigent Defense Commission hereinafter identified as MIDC specifically Standards 1-4. The collaboration and oversight of compliance with these standards for the CITY will be performed by the designee of the city

As of the date of this contract the 15th District Court Judge and/or Magistrate shall be responsible for assigning cases to the either the Contracted Law Firm determined by the COUNTY, the County Public Defender where a conflict of interests has determined, or to a List Attorney where a conflict of interests has been determined by both the Contract Law Firm and County Public Defender. The COUNTY will be responsible or payment to the assigned attorney once the 15th District Court or the County Managed Assigned Counsel Coordinator verifies that the services has been provided in accordance with the MIDC standards.

The Letter of Agreement will be subject to additional MIDC standards, if any, which have been approved during the term of the contract or any extension, including modification of local share.

In the performance of this Agreement, all parties agree to abide by the approved MIDC Standards (1-4) and the MIDC approved compliance plan for Washtenaw County. Breach of this covenant may be regarded as material breach of contract.

ARTICLE IV TERMINATION OF CONTRACT

If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.

This contract may be terminated without cause by any of the parties hereto upon sixty (60) calendar days written notice to all the other parties to this contract. At the time of the said notice the COUNTY will continue representation of the cases for the 60 days in which the COUNTY Public Defender's appearance has been entered and the CITY will begin representation on all new matters. If the MIDC Grant does not provided funding

for the COUNTY'S representation during the sixty (60) day termination period, the CITY will reimburse the County for the Services provided.

If grant funds are not appropriated or otherwise made available by the Michigan Indigent Defense Commission, the parties shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the other parties. The COUNTY shall give the CITY written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated below or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first-class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the County, it shall be addressed and sent to:

Washtenaw County
Gregory Dill, County Administrator
220 N. Main St.
Ann Arbor, Michigan 48107

With a copy to: The Office of the Public Defender
Attn: Delphia Simpson, Public Defender
220 E. Huron St., 5th Floor
Ann Arbor, Michigan 48104

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
Tom Crawford, City Administrator
City Hall
301 E. Huron Street, 3rd Floor
Ann Arbor, Michigan 48104

With a copy to: 15th Judicial District Court
Attn: Shryl Samborn, Court Administrator
Ann Arbor Justice Center
301 East Huron Street, 4th Floor
Ann Arbor, Michigan 48104

ARTICLE V REPORTING

MIDC Reporting. The City shall cooperate with the County for the MIDC required Monitoring and Reporting Program Performance Reports, including providing the County with the MIDC necessary data relating to the services under this Agreement. These MIDC reports and required data may include:

A description on progress toward compliance with Standards 1-4, including a description of problems or delays, real or anticipated and any significant deviation from the approved Compliance Plan.

Specific standards compliance information as requested by MIDC and to by the local system, including the City and its subcontractors.

Access to Books, Documents, Papers and Records. Unless disclosure of the information is prohibited by law, all financial records pertaining to the provision of indigent defense services, including but not limited to all books, documents, papers and records, checks, payrolls, time records, invoices, vouchers, purchase orders, contracts or other data, information and material concerning provision of indigent defense services of the City shall be open to inspection during regular working hours by the County through the Washtenaw County Administrator or his/her designee, and by the MIDC and its designated representatives. The City shall do the following:

Make available and permit the County's and the MIDC's authorized representatives, to audit, examine, and copy any such records.

Allow the County's and the MIDC's authorized representatives to review all such documents that are considered as back up to the operations performed by the City under this Agreement regardless of funding source.

The City must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded.

Refusal to allow the County, the MIDC, or their representatives access to said records shall constitute a material breach of this Agreement and grounds for termination. In addition, the Washtenaw County Administrator or his/her designee shall be entitled to prepare quarterly and/or annual audits of all books and records pertaining to the program.

ARTICLE VI DISCLOSURE OF CONFIDENTIAL MATERIAL

All reports, data, information, statements, forecasts, records and similar materials assembled, constructed, or prepared pursuant to, or as a consequence of, this Agreement are subject to all Federal and Michigan laws and regulations governing the disclosure of public records, subject to certain exemptions from disclosure under the circumstances expressly authorized by the above laws and regulations.

ARTICLE VII ESTABLISHMENT AND MAINTENANCE OF RECORDS

The City shall establish and maintain all necessary records concerning any matter covered by this Agreement. Unless otherwise expressly authorized by the County's Administrator, the City shall maintain all records related to this Agreement, including financial records and accounts, for a period of through the term of the Grant and for seven (7) years after the latter of termination, expiration, or final payment under this Grant or any extension. If any litigation, claim or audit is started before the expiration of the seven (7) year period, the records shall be retained by the City until all litigation, claim or audit findings involving the records have been resolved.

ARTICLE VIII LIABILITY

All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities, such as direct service delivery, to be carried out by the County in the performance of this Agreement shall be the responsibility of the County, and not the responsibility of the City, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of the County, any subcontractor of the County, anyone directly or indirectly employed by the County, or agent of the County, provided that nothing herein shall be construed as a waiver of any governmental immunity that has been provided to the County or its officers, employees, or agents by statute or court decisions.

All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities, such as direct service delivery, to be carried out by the City in the performance of this Agreement shall be the responsibility of the City and not the responsibility of the County, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of the City, any subcontractor of the City, anyone directly or indirectly employed by the City, or agent of the City, provided that nothing herein shall be construed as a waiver of any governmental immunity that has been provided to the City or its officers, employees, or agents by statute or court decisions.

In the event that liability to third parties, loss, or damage arises as a result of activities conducted jointly by the County and the City in fulfillment of their responsibilities under this Agreement, such liability, loss or damage shall be borne by the County and the City in relation to each party's responsibilities under these joint activities, provided that nothing herein shall be construed as a waiver of any governmental immunity by the County, the City or their officers, employees, or agents respectively, as provided by statute or court decisions.

Inasmuch as each party to this grant is a governmental entity of the State of Michigan, each party to this grant must seek its own legal representation and bear its own costs; including judgments, in any litigation which may arise from the performance of this grant. It is specifically understood and agreed that neither party will indemnify the other party in such litigation.

ARTICLE IX DISCLOSURE OF LITIGATION, OR OTHER PROCEEDING

The Parties must notify the other within fourteen (14) calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") involving a public defender office or attorney employed by a public defender office or attorneys contracted to provide Public Defense services that are funded by the Grant that arises during the term of the Grant and involves: (a) a criminal Proceeding; (b) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect City's viability, or (2) a governmental or public entity's claim or written allegation of fraud; or (c) a Proceeding involving any license that an attorney practicing on behalf of a public defender office is required to possess in order to perform under this Grant.

ARTICLE X CONFLICTS AND ETHICS

The Parties will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Grant; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Grant; (c) attempting to influence or appearing to influence any State, County or City employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for City or County, any consideration contingent upon the award of the Grant. The Parties must immediately notify the other of any violation or potential violation of these standards. This Section applies to the parties, any parent, affiliate, or subsidiary organization of both Parties, and any subcontractor that performs Activities in connection with this Grant.

ARTICLE XI ILLEGAL INFLUENCE

The Parties certify, to the best of their knowledge and belief that no state funds have been paid nor will be paid, by or on behalf of the City or county, to any person for influencing or attempting to influence an officer or employee of any State, County or City agency, a member of the Legislature, or an employee of a member of the Legislature in connection with the awarding of any state contract, the making of any state grant, the making of any state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state contract, grant, loan or cooperative agreement.

ARTICLE XII NONDISCRIMINATION

Each party shall adhere to all Federal, State and local laws, ordinances and regulations prohibiting discrimination with regard to persons seeking and/or receiving services or employment under the terms of this Agreement. That each party, as required by law, shall not discriminate against a person to be served or an employee or applicant for

employment, because of race, color, religion, national origin, age, sex, gender identity, sexual orientation, disability, height, weight, marital status, political affiliation or beliefs, student status and arrest record.

ARTICLE XIII INDEPENDENT CONTRACTOR

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

ARTICLE XIV NON-BENEFICIARY CONTRACT

This Agreement is not intended to be a third-party beneficiary contract and confers no rights on anyone other than the parties hereto.

ARTICLE XV WAIVERS

No failure or delay on the part of either of the parties to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

ARTICLE XVI MODIFICATION OF AGREEMENT

Modifications, amendments or waivers of any provision of this Agreement may be made only by the written mutual consent of the parties hereto.

ARTICLE XVII DISREGARDING TITLES

The titles of the sections set forth in this Agreement are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any of the provisions of this Agreement.

ARTICLE XVIII COMPLETE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind either of the parties hereto.

ARTICLE XIX SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

ARTICLE XX SURVIVAL CLAUSE

All rights, duties and responsibilities of the County and the City under this Agreement that either expressly or by their nature, extend into the future, and shall extend beyond and survive the end of the term or termination of this Agreement.

ARTICLE XXI 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. This contract is governed by the laws of the State of Michigan.

ARTICLE XXII ELECTRONIC TRANSACTION

The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to the is Agreement. This Agreement may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other parties.

ARTICLE XXIII EFFECTIVE DATE

This Agreement will become effective when all parties have signed it. The Effective Date of this Agreement will be the date this Agreement is signed by the last party to sign it.

ARTICLE XXIV CERTIFICATION OF AUTHORITY TO SIGN AGREEMENT

The persons signing on behalf of the parties hereto certify by their signatures that they are duly authorized to sign this Agreement on behalf of said parties and that this Agreement has been authorized by said parties.

FOR THE COUNTY OF WASHTENAW

FOR THE CITY OF ANN ARBOR

By: _____
Greg Dill
Washtenaw County Administrator

By: _____
Christopher Taylor (Date)
Mayor

By: _____
Lawrence Kestenbaum (Date)
Washtenaw County Clerk/Register

By: _____
Jacqueline Beaudry (Date)
City Clerk

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
Michelle Billard (Date)
Washtenaw County Corporation Counsel

By: _____
Stephen K. Postema (Date)
City Attorney

APPROVED AS TO SUBSTANCE

APPROVED AS TO SUBSTANCE:

By: _____
Delphia Simpson (Date)
Washtenaw County Chief Public
Defender

By: _____
Tom Crawford (Date)
City Administrator

By: _____
Joseph F. Burke (Date)
Chief Judge, 15th District Court

By: _____
Shryl Samborn (Date)
Court Administrator, 15th District Court