

**Agreement Between
The City of Ann Arbor on behalf of the 15th Judicial District Court
and
Avalon Housing**

Agreement is made this ____ day of _____, 2018, by and between the City of Ann Arbor (the "City"), a municipal corporation, on behalf of the 15th Judicial District Court (the "Court"), located at 301 E. Huron Street, Ann Arbor, MI 48104 and Avalon Housing, located at 1327 Jones Drive, Suite 102, Ann Arbor, MI 48105 (the "Contractor", EIN: 38-3086920).

The Contractor agrees to provide services to the City under the following terms and conditions:

I. DEFINITIONS

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

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

Specialty Court means Mental Health Court of the 15th Judicial District Court.

II. DURATION

This contract begins on October 1, 2017 and ends on September 30, 2018, unless otherwise terminated or extended as provided therein.

In the event the State Court Administrative Office extends the term of the grant funding this contract to any date beyond September 30, 2018, and Contractor is not in breach of its responsibilities under the agreement, then in that case the term of this agreement will be extended to a date concurrent with the extended grant termination date without further action by the parties.

III. SERVICES

The Contractor agrees to provide Services to 15th Judicial District Court, Specialty Court (collectively "Services") in connection with this agreement in conformance with the following:

- A. Mental Health Court: The Contractor will provide direct case management services for a maximum caseload of 25 participants at any time, and any other services mutually agreed upon in writing by the Contractor and the Court for defendants referred to the Contractor by the Court from the Court's Mental Health Court docket.
- B. The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by written order. If the changes add to or deduct from the extent of the Services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.

- C. Quality of Services under this Agreement shall be of the level of professional quality performed by persons regularly rendering these types of services. Determination of acceptable quality shall be made solely by the Contract Administrator.
- D. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services in this Agreement.
- E. The Contractor shall comply with all applicable laws, ordinances, and codes of the federal, state, and local governments.

IV. 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.

V. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid in the manner set forth in Exhibit A. Payment shall be made monthly, unless another payment term is specified in Exhibit A. Total payment for all Services, including any reimbursable expenses, shall not exceed the amounts specified for the respective Specialty Courts in Article V(C) below.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- C. The Contractor acknowledges that payment for these Services is being made through grant funding from the Supreme Court of Michigan State Court Administrative Office Michigan Mental Health Court Grant Program (SCAO-MMHCGP) (\$47,002.00) for Grant Fiscal Year 2018. Contractor further acknowledges and agrees that only program activities and expenses detailed in the approved grant budget and incurred during the grant period are eligible for payment. Expenses incurred that are not detailed in the approved grant budget or outside the grant period will not be reimbursed.
- D. Costs charged to one Specialty Court program cannot be charged to any other program. Costs must be net of all applicable credits such as purchase discounts, rebates or adjustments of overpayments or erroneous charges.
- E. Before submitting any request for payment to the Contract Administrator, the Contractor shall collect 1st and 3rd party fees, including, but not limited to, Medicare, Medicaid, insurance or any other public or private funding. Any under-recoveries of otherwise available fees resulting from failure to bill for eligible services will be excluded from reimbursable expenditures.

- F. Detailed invoices which include invoice date, name of the court participant served, date of service, type of service, and the fee amount, shall be submitted to the Contract Administrator, or designee, on a monthly basis for vetting and approval. Invoices for case management services must also include supporting documentation such as case manager time sheets.
- G. The Contractor shall keep complete records of time spent, materials used and services provided so that the City or SCAO may verify invoices submitted by the Contractor. Such records shall be made available to the City or SCAO upon request and submitted in summary form with each invoice.
- H. The Contractor acknowledges and agrees that failure to submit adequate supporting documentation with a monthly invoice that is not corrected prior to the grant fiscal year close out deadline will result in non-reimbursement of those costs. Costs from one grant fiscal year cannot be paid in a subsequent grant fiscal year.

VI. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this contract such insurance policies, including those set forth in Exhibit B, as will protect itself, the City and the Court from all claims for bodily injuries, death or property damage which may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation satisfactory to the City demonstrating it has obtained the policies and endorsements required by Exhibit B.
- B. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold the City and Court officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's or Court's negligence or willful misconduct or failure to comply with any of its material obligations set forth in this Agreement.

VII. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

- B. Living Wage. If the Contractor is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VIII. WARRANTIES BY THE CONTRACTOR

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.
- E. The Contractor warrants that it is not, and shall not become, in arrears to the state of Michigan or any of its subdivisions upon contract, debt, or any other obligation to the state of Michigan or its subdivisions, including real property, personal property, and income taxes.
- F. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting completion as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

IX. CONFIDENTIALITY AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

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

- A. The Contractor must not share any protected health or other protected data and

information provided by the STATE COURT ADMINISTRATIVE OFFICE or any other source that falls within HIPAA, 42 CFR Part 2, and /or the Michigan Mental Health Code requirements, except to a subrecipient subcontractor as appropriate under this contract.

- B. The Contractor must require, in the terms and conditions of any subcontract, that the subrecipient subcontractor not share any protected health or other protected data and information from the court or any other source that falls under HIPAA, 42 CFR Part 2, and /or Michigan Mental Health Code Requirements.
- C. The Contractor must use protected data and information only for the purposes of this contract. The Contractor shall not share any protected information without a written release from the court participant being served.
- D. The Contractor must have written policies and procedures addressing the use of protected data and information that falls under HIPAA, 42 CFR Part 2, and /or Michigan Mental Health Code requirements. The policies and procedures must meet all applicable federal and state requirements including HIPAA, 42 CFR Part 2, and/or Michigan Mental Health Code regulations. These policies and procedures must include restricting access to the protected data and information by the Grantee's employees.
- E. The Contractor must have a policy and procedure to report to the 15th Judicial District Court Contract Administrator any unauthorized use or disclosure of protected data and information that falls under HIPAA, 42 CFR Part 2, and /or Michigan Mental Health Code requirements of which the Contractor becomes aware.
- F. Failure to comply with any of these contractual requirements may result in the termination of this contract.
- G. In accordance with HIPAA, 42 CFR Part 2, and/or Michigan Mental Health Code requirements, the Contractor is liable for any claim, loss, or damage relating to its unauthorized use or disclosure of protected data and information received by the Contractor from the SCAO or any other source.

X. REPORTING OF CONTRACTOR, RETENTION REQUIREMENTS

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

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

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

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

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

XI. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor access to City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

XII. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XIII. TERMINATION OF AGREEMENT

- A. 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.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for these Services. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City 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 Contractor. The Contract Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

- D. The provisions of Articles VI and VIII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Contractor's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

XV. REMEDIES

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
- B. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise.
- C. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.

XVI. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement 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 CONTRACTOR, it shall be addressed and sent to:

Avalon Housing
Aubrey Patino, Associate Director of Clinical Services
1327 Jones Drive, Suite 102
Ann Arbor, MI 48105

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

15th Judicial District Court
Shryl Samborn, Court Administrator
Ann Arbor Justice Center
301 E. Huron St.
Ann Arbor, Michigan 48104

XVII. CHOICE OF LAW AND FORUM

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

XVIII. OWNERSHIP OF DOCUMENTS

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

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

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

XIX. CONFLICTS OF INTEREST OR REPRESENTATION

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

Contractor agrees to advise the City if Contractor has been or is retained to handle any matter in which its representation is adverse to the City. The City's prospective consent to the Contractor's representation of a client in matters adverse to the City, as identified above, will not apply in any instance where, as the result of Contractor's representation, the Contractor has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to another client of the Contractor, could be used in any such other matter by the other client to the material disadvantage of the City. Each matter will be reviewed on a case by case basis.

XX. 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.

XXI. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

FOR AVALON HOUSING

By: _____
Aubrey Patino (Date)
Associate Director of Clinical Services

FOR THE CITY OF ANN ARBOR

By: _____
Christopher Taylor (Date)
Mayor

By: _____
Jacqueline Beaudry (Date)
City Clerk

APPROVED AS TO FORM & SUBSTANCE:

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

APPROVED AS TO SUBSTANCE:

By: _____
Howard S. Lazarus (Date)
City Administrator

[signatures continued on next page]

APPROVED AS TO SUBSTANCE:

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

APPROVED AS TO SUBSTANCE:

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

EXHIBIT A COMPENSATION

General

The Compensation Schedule below states nature and amount of compensation the Contractor may charge the City subject to the limitations stated in Article V:

Mental Health Court

Case Management

- Case Manager 1 (NTE 1508 hours) \$27.90 per hour
- Case Manager 2 (senior) (NTE 78 hours) \$38.38 per hour

Mileage Rate (NTE 3,150 miles) \$0.535 per mile

Incentives for Participants (NTE 10) \$25.00 per incentive

EXHIBIT B INSURANCE REQUIREMENTS

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

A. The Contractor shall have insurance that meets the following minimum requirements:

1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.

2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or
Property Damage Liability, or both combined
\$2,000,000 Per Job General Aggregate
\$1,000,000 Personal and Advertising Injury

4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

- B. Insurance required under A.3 above shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.
- C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.