

AGREEMENT FOR ATTORNEY SERVICES FOR
INDIGENT INDIVIDUALS
2015-2016

THIS AGREEMENT made and entered into this 1st day of January, 2015, by and between the COUNTY OF ISABELLA, a municipal corporation and political subdivision of the State of Michigan (referred to as the "County") on behalf of the Isabella County Trial Court (referred to as the "Court") and

Sara Spencer-Noggle
Contract Administrator
215 West Broadway
Mt. Pleasant, MI 48858
989-317-8053
J.D. 2006, Mich Bar #70038

(referred to as the Contract Administrator); and

William J. Shirley
108 South University Avenue, STE 4
Mt. Pleasant, Michigan 48858
(989) 772-2445
J.D. 1969, Mich Bar #P20382;

Thomas Bromell
P.O. Box 344
Mt. Pleasant, Michigan 48804-0344
(989) 621-5082
J.D. 1985, Mich Bar #P38634;

Gordon M. Bloem
108 South University Avenue, STE 1
Mt. Pleasant, Michigan 48858
(989) 775-7730
J.D. 1985, Mich Bar #P38534;

Tony Moses
125 E. Newark, STE 200
Ithaca, Michigan 48847
(989) 953-4304
J.D. 2000, Mich Bar #P63874;

Chuck Moses
122 Kinney
P.O. Box 1361
Mt. Pleasant, Michigan 48858
(989) 560-4547
J.D. 2001, Mich Bar #P63853;

Sara Spencer-Noggle
215 West Broadway
Mt. Pleasant, MI 48858
989-317-8053
J.D. 2006, Mich Bar #70038;

(referred to as the "Contractor", the "Contract Administrator" is also a "Contractor").

WHEREAS, the Court requires attorney services for indigent individuals appearing before the Court; and

WHEREAS, the Contractor is licensed to practice law in the State of Michigan and is willing and qualified to perform such services as assigned by the Court.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, IT IS MUTUALLY AGREED, as follows:

1) DUTIES OF THE CONTRACT ADMINISTRATOR

a) Scope of Services.

- i) The Contract Administrator will have the responsibility of appointing the Contractor to the individual cases and courts. The Contract Administrator and the Court will work toward the goal of separate Contractors for each division of the Court during this contract period. Once a case has been appointed to a Contractor by the Contract Administrator, the case becomes the sole responsibility of the appointed Contractor and all subsequent changes in scheduling from the original notice must be communicated directly to the appointed attorney to minimize conflicts in the schedule of both the court and the attorney. In order to minimize scheduling problems due to multiple appearances, illness, vacation, or for any reason, the contract attorney may employ another Contractor to handle a particular hearing, with the approval of the appropriate Judge and client. Should the Contract Administrator be unavailable, the Circuit, District or Probate Judge may contact and appoint any one of the Contractor's or other qualified attorney at County expense directly.
- ii) For an attorney to be added to the contract there must be a vacancy, meaning one of the above attorneys must have tendered their resignation or were terminated from the contract. The process requires a prospective attorney to send a letter and copy of their liability insurance to the Contract Administrator. The Contract Administrator reviews this information and forwards to the Court Administrator for the Court and County Board of Commissioners to approve the applicant and add them to this contract through a dated and signed addendum.
- iii) Submission of Vouchers. The Contract Administrator will receive compensation by submitting a monthly payment voucher delivered to the Court Administrator for approval and payment. The Contract Administrator's voucher for payment shall be based upon \$300.00 flat appointment fee. The Contract Administrator will provide a print out of all appointments for the month (e.g., \$300 x 104 appointments = \$31,200.00).

2) DUTIES OF THE CONTRACTOR

- a) Scope of Services. During the term of the Agreement, the attorneys agree to provide the following representation for each person whom they are appointed by the Court pursuant to the Agreement:
 - i) Appearances at preliminary examinations, arraignments, motions, hearings, trials, pleas, sentencings, lineups, extradition matters, paternity, parole and probation violation proceedings, child support contempt proceedings, juvenile offenses, guardian ad litem in guardianship cases filed pursuant to child protective proceeding cases, juvenile contempt proceedings for parents and juveniles, neglect and abuse petitions, personal protection orders, mental commitment hearings and the attorney/guardian ad litem for the child to appear at the Foster Care Review Board hearings and any other related matters. If the attorney/guardian ad litem cannot make the Foster Care Review Board hearing for good reason, he/she may provide written information to the Foster Care Review Board with the approval of the judge handling

the case; and

ii) Appeals to Circuit Court; and

iii) Residents of other counties in mental commitment and judicial admission hearings.

Contractor's services under this Agreement does not include defense of appeals by the Prosecution or Defense to the Michigan Court of Appeals or the Michigan Supreme Court, nor does it include representation upon remand or reversal by the Court of Appeals or the Michigan Supreme Court, if the Order of Remand or Reversal is entered after the term of this Agreement.

Contractor shall provide "on call" services whereby the proper law enforcement authorities can contact, by phone, the Contractor, if the urgency of the situation demands immediate attention.

Contractor shall be available for seminars or speaking engagements regarding the criminal justice system or any aspect thereof (not specific pending cases) upon request of the County.

iv) Office and Telephone. The Contract Administrator shall maintain a full-time office, telephone service and secretarial staff in Isabella County for the duration of this Agreement.

v) Assigned Cases.

A case is considered appointed to the Contractor when an Isabella County Trial Court Judge signs an Order for Appointment of Counsel. The attorneys shall interview their incarcerated clients at the Isabella County Jail within 48 hours of the appointment of counsel.

Contractor's appointment applies only in the court in which it is made, or to which the action is transferred, until a final judgment is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. If an appointment is withdrawn, or the attorney is discharged from a case, for reasons other than a conflict of interest, the withdrawal or discharge shall constitute final disposition under the Agreement. Should the attorney be reappointed to such a case, the reappointment shall be processed as a new separate case.

vi) Priority. The Contractor will give the priority as assigned cases over private practice cases and will avoid seeking adjournments of assigned cases as a priority over private cases.

vii) Continued Representation. Appointed cases which shall continue beyond this Agreement's termination date shall be completed by the Contractor at no additional cost for a period of 18 months. In the event representation continues beyond 18 months after the Agreement's termination date, services rendered by the Contractor shall be compensated at a rate that is consistent with the compensation proved for in this Agreement. Appointed cases shall be those for which the appointment is made under this Agreement or any extension thereof between January 1, 2015 and December

31, 2016. A list of those cases shall be compiled by the Contractor and presented to the Court Administrator within 14 days after the termination of this Agreement.

Appointment of Other Counsel. In the discretion of the Chief Judge, a certain number of cases may be appointed to attorneys not under contract with the Court. The Chief Judge shall have the sole and absolute discretion to appoint cases so as to ensure effective assistance of counsel at a reasonable cost to the County. In the event a conflict occurs in the representation of co-defendants, the Contractor shall notify the Chief Judge who may appoint for the co-defendants legal counsel necessary to resolve the conflict under or outside of this Agreement.

viii) Appointment/Subcontracting and Continuation of Law Practice. The Contractor shall not assign, subcontract, or otherwise transfer duties and/or obligations under this Agreement without the prior written approval of the Chief Judge and Contract Administrator. No additional payments shall be made by the Court for the services of the subcontractor. The compensation of subcontractors shall be the responsibility of the Contractor.

Contractor is required to continue its law practice for the duration of this Agreement. If Contractor's law practice discontinues for any reason, the County may terminate this Agreement or relevant provisions of this Agreement. If Contractor is unable to provide legal services as required by this Agreement, the Court may terminate this Agreement as the said Contractor. "Unable" is intended to cover situations such as death, a long term disability or illness, or loss or suspension of a license to practice law.

3) TERM OF COMPENSATION

- a) TERM. This Agreement shall commence on the 1st day of January, 2015 and shall continue through the 31st day of December, 2016, at which time it shall terminate, unless renewed by the parties. The Court and County shall have the option to renew this Agreement for up to two additional two-year periods, on the same terms and conditions. Either the Court, County or Contractor may terminate this Agreement for any or no reason upon sixty (60) days prior written notification to the other party.
- b) Basic Contractor Compensation. The Contractor will represent indigent defendants in all cases assigned by the Court during the term of this Agreement and compensation shall be THREE HUNDRED AND NO/100 DOLLARS (\$300.00) per case ("Flat Fee").

In addition to the flat fee, the County shall pay the Contractor \$400.00 per day and \$200.00 per half day for every trial in an assigned case ("Trial Fee"). The trial fee shall commence the first day of trial. This paragraph is intended to comply with and satisfy the holding in Recorder's Court Bar Ass'n v Wayne Circuit Court, 443 Mich 110, 503 NW 2d 885 (1993). The County shall also pay \$75.00 per hour for all motions filed and argued by a Contractor only when incurred pursuant to prior written approval of the Contract Administrator.

- c) Extraordinary Expenses. The Contractor will receive additional compensation for cost reasonably incurred for necessary expenses, including but not limited to costs for police report, expenses from obtaining necessary medical and legal records, expert witness examinations, fees for depositions, investigative fees, competency and other medical tests, fees for transcripts, filing witness and service fees, mileage for necessary appearance(s) outside of the County of Isabella at the County's mileage rate, unless transportation is otherwise provided by the County and any other court charges incurred by the Contractor in the performance of the services to be provided under the Agreement. These expenses shall be reimbursed by the County only when incurred pursuant to prior written approval of the appropriate Judge.

Contractor's assigned to Abuse and Neglect cases, are entitled to the equivalent of one flat fee (\$300.00) per year they maintain said case post adjudication. On Abuse and Neglect cases attorneys/guardian ad litem are entitled to mileage at the County's mileage rate for trips to visit minor child(ren).

Contractor's appointment to either the Adult or Juvenile Drug Court teams will receive flat fees (\$600.00) per year, if Contractor attends at least 70% of the meetings. The fees will be paid after verification of meeting attendance by the Court Administrator.

In the event Contractor is appointed to an extraordinary case, the Contractor may petition the appropriate Judge for additional fees. An extraordinary case is one that demands extensive amount of time, preparation or pretrial motions when compared to an ordinary case.

*** Capital murder cases will be handled outside the parameters of this contract.

4) MISCELLANEOUS PROVISIONS

- a) Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Michigan. In the event any actions arising under this Agreement are brought by or against the parties hereto, the venue for such actions shall be established in accordance with the statutes of the State of Michigan and/or Michigan Court Rules. In the event that any action is brought under this Agreement in Federal Court, the venue for such action shall be the Federal Judicial District of Michigan, Eastern District –North Division.
- b) Compliance with the Law. The Contractor shall render the services required by this Agreement in compliance with all applicable Federal, State, and local laws, ordinances, rules and regulations, including but not limited to, all applicable OSHA/MIOSHA requirements, the Americans with Disabilities Act, Federal and/or State licensing and/or certification requirements of persons to provide services under this Agreement, and with all applicable policies, rules and regulations of the Court.
- c) Compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. To the extent the Contractor has access to health information of participants in which is protected by the (HIPAA), Public Law 104-191, as amended, Contractor shall comply with all applicable requirements of HIPAA and the rules and regulations which are promulgated pursuant thereto, 45 CFR Parts 160 and 164, as amended.

Access shall be limited to the minimum necessary to provide the applicable service.
Breach of this section shall be a material breach of this contract.

- d) Insurance Requirements. The Contractor must obtain and maintain during the term of this Agreement the following insurance coverage requirements. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverage's shall be with insurance carriers acceptable to the County and have an A.M. Best Company's Insurance Reports Rating of A or A- (Excellent).
- i) The Contractor shall carry Workers' Disability Compensation and Employer's Liability Insurance Coverage, as required by law. In the event that the Contractor uses subcontractors and sub-subcontractors for the performance of services required under this proposal, the Contractor shall ensure that said subcontractors and sub-subcontractors carry Workers' Disability Compensation and Employer's Liability Insurance coverage, as required by law.
 - ii) The Contractor shall be responsible for insuring all its equipment and all materials which it may use and/or leave at Court. The County shall not be responsible for any loss or damage to Contractor's equipment and materials.
 - iii) The Contractor shall procure and maintain during the term of the contract Professional Liability Insurance on an "Occurrence base" with limits of liability of not less than \$100,000.00/\$300,000.00 to insure against any and all liability arising through the acts or omissions of the firm/attorney(s) under this Agreement.
 - iv) Cancellation Notice: Professional Liability Insurance, as described above shall include an endorsement state the following "it is understood and agreed that Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to: Isabella County Purchasing, Attention County Administrator, 200 N. Main Street, Mt Pleasant, Michigan, 48858.
- If any of the above coverages expire during the term of this contract, the Contractor shall deliver renewal certificates and/or policies to County Administrator at least ten (10) days prior to the expiration date.
- e) Non-discrimination. The Contractor shall not discriminate against a person to be served under, under this Agreement because of race, color, religion, national origin, sex disability, height, weight, marital status, political affiliation or beliefs, or citizenship. The Contractor shall adhere to all Federal, State and local laws, ordinances, rules and regulations prohibiting discrimination with regard to persons seeking employment. The Contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, employment because of race, color, religion, national origin, age, sex, disability, height, weight, marital status, political affiliation or beliefs or citizenship. Breach of the covenants set forth in this paragraph shall be regarded as a material breach of this Agreement.
- f) Independent Contractor. It is expressly understood and agreed that the Contractor is an independent contractor. The employees, servants and agents of the Contractor shall in no way be deemed to be and shall not hold themselves out as employees, servants or agents

of the Court or County. The Contractor's employees servants and agents shall not be entitled to any fringe benefits of the Court or County, such as but not limited to, health and accident insurance, life insurance, paid vacation leave, paid sick leave or longevity. The Contractor shall be responsible for the withholding and payment of applicable taxes, including, but not limited to local governments. The Contractor shall carry work's compensation and unemployment compensation coverage for its employees as required by law.

- g) Indemnification and Hold Harmless. The Contractor shall, at its own expense, protect, defend, indemnify and hold harmless the Court and Isabella County, its elected and appointed officers, employees and agents from all claims, damages, (including but not limited direct, indirect, incidental, consequential, special and punitive damages), costs lawsuits and expenses including, but not limited to, all cost from administrative proceedings, court costs, and attorney fees, that they may incur as a result of any acts, omissions or negligence of the Contractor, its employees or agents or its subcontractors, or any of their officers, employees or agents which may arise out of the Agreement.

The Contractor's indemnification responsibilities shall include the sum of damages, costs and expenses which are in excess of the sum paid out on behalf of or reimbursed to the Court or Isabella County or its elected and appointed officer, employees, agents or by the insurance coverage obtained and/or maintained by the Contractor pursuant to the requirements of this Agreement.

- h) Waivers. No failure or delay on the part of either of the parties to this Agreement in exercising any right, powers or privilege shall operate as a waiver 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.
- i) Modification of Agreement. Modification, amendments or waivers of any provision of this Agreement may be made only with the written consent of the parties.
- j) Disregarding Titles. The titles of the paragraphs in this Agreement are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any provision of this Agreement.
- k) Completeness of the Agreement. This Agreement contains all the terms and conditions agreed to by the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, or any part, shall have any validity or bind any of the parties.
- l) Invalid Provisions. If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected.
- m) Certification. The persons signing on behalf of the parties certify by their signatures that they are duly authorized to sign this Agreement on behalf of the parties and that this Agreement has been authorized by the parties.

IN WITNESS WHEREOF, the authorized representative of the parties hereto have fully signed this Agreement on the day and year first above written.

ISABELLA COUNTY:

ATTORNEY/FIRM:

BY: GEORGE GREEN
ITS: Chairman, Board of Commissioners

BY: SARA SPENCER-NOGGLE
ITS: Contract Administrator/
Contractor

ISABELLA COUNTY TRIAL COURT:

BY: WILLIAM J. SHIRLEY
ITS: Contractor

BY: PAUL H. CHAMBERLAIN
ITS: Chief Judge

BY: THOMAS BROMELL
ITS: Contractor

BY: TONY MOSES
ITS: Contractor

BY: CHUCK MOSES
ITS: Contractor

BY: GORDON M. BLOEM
ITS: Contractor

APPROVED AS TO FORM
FOR COUNTY OF ISABELLA
COHL, STOKER & TOSKEY, P.C.

By: 

Mattis D. Nordfjord

N:\Client\Isabella\Agris\Public Defenders Agr 2015.doc