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October 1, 2021

Sarah Plinsky
County Administrator
Douglas County
1100 Massachusetts Street
Lawrence, KS 66044

Dear Ms. Plinsky:

The purpose of this letter is to submit a proposal for the County's consideration. Specifically, we are a racially and gender diverse group of local criminal defense attorneys proposing to contract with Douglas County to provide representation to all indigent adults charged with misdemeanor offenses in the Douglas County District Court, for the period of January 1, 2022, to December 31, 2027, at an annual cost of \$525,000.

We believe our proposal, if accepted, will significantly enhance the delivery of defense services to all indigent adults charged with misdemeanor offenses in the Douglas County District Court. For example, we will ensure that an attorney is present at all court appearances including initial bond appearances. Additionally, we believe there will be increase accountability when it comes to defense services with oversight by a Policy Board which includes Paula Martin, retired Douglas County District Court Judge, and Stan Hazlett, retired Disciplinary Administrator for the State of Kansas

I have enclosed an Executive Summary, a proposed contract, and the resumes of most of the defense attorneys who have pledged to perform pursuant to the contract. We would welcome the opportunity to meet with you and other interested parties to answer any questions you have concerning our proposal.

Sincerely,

/s/ Michael R. Clarke
Michael R. Clarke

Cf: James McCabria
Linda Koester-Vogelsang

PROPOSED CONTRACT FOR PUBLIC DEFENSE SERVICES
Executive Summary

Douglas County Defense Services (hereinafter “DCDS”) proposes to contract with Douglas County (hereinafter “County”) for DCDS to provide representation to all indigent adults charged with misdemeanor offenses in the Douglas County District Court, for the period of January 1, 2022, to December 31, 2027, at an annual cost of \$525,000.

DCDS will be an organization established for the primary purpose of providing representation to indigent adults charged with misdemeanor offenses in the Douglas County District Court. DCDS will contract with experienced, private practice criminal defense attorneys to provide criminal defense services pursuant to the contract. By contracting with private practice attorneys rather than employing attorneys, conflicts of interest such as those prohibited by Rules of Professional Conduct 1.7 through 1.9 can be avoided. Contracted attorneys will maintain average annual caseloads in accordance with the caseload maximums prescribed by the National Advisory Commission on Criminal Justice Standards and Goals (NAC). DCDS intends to contract with the following attorneys, all of whom reside in Douglas County, possess the requisite professional legal experience, and have years of experience practicing criminal defense in the Douglas County District Court:

- Julia Butler,
- Hatem Chahine,
- Michael Clarke,
- Shaye Downing,
- Blake Glover,
- Dakota Loomis, and
- Branden Smith.

Additionally, DCDS intends to contract with Hannah Soo, a Spanish-speaking, immigration attorney, who will serve as co-counsel on any case involving (a) possible immigration consequences, and/or (b) a client whose first language is Spanish and does not speak fluent English.

DCDS will employ a full-time legal assistant. The legal assistant will operate out of the suite of offices located at 831 Massachusetts Street and will be the primary point of contact for all DCDS telephone and walk-in inquiries. The legal assistant will be responsible for the initial conflict check upon the referral of a new client to DCDS; opening and closing files; updating and checking the attorneys' calendars; reminding clients of appointments and court appearances; obtaining and redacting records.

Oversight of DCDS and its contract attorneys in matters such as interpretation of indigent defense standards, reasonable caseloads, and response to County, court, and community concerns, shall be provided by a Policy Board. The Policy Board shall be appointed by the DCDS, subject to approval by the County and, shall consist of 3 members, a majority of whom shall be licensed attorneys. It is envisioned that a representative of the County, a representative of the District Court and a representative of DCDS will meet regularly, i.e., at least 4-times per year, with the Policy Board. Two of the initial Policy Board members have been identified and have agreed to serve in that capacity, they are:

- Paula Martin, retired Douglas County District Court Judge;
- Stan Hazlett, retired Disciplinary Administrator for the State of Kansas; and

Judge Martin and Administrator Hazlett are well known to the district court judges, are intimately familiar with the operation of the court and indigent defense standards.

DCDS representation will begin at a defendant's first appearance or arraignment, whichever occurs first., and therefore a DCDS contract attorney will be present at each first appearance docket. DCDS representation will terminate upon either the dismissal of the case, filing of a diversion, admission to a specialty court program, sentencing and the filing of a notice of appeal or waiver of appeal, entry of appearance by retained counsel or for other good cause as determined by the court.

Using Phone.com (VoIP), DCDS will establish one telephone number for all clients and other interested parties to use to contact DCDS, its employees and contract attorneys. All calls will be answered by DCDS's legal assistant and routed to the appropriate person. In the event the legal assistant is unable to answer a call, the Phone.com answering service will answer the call and either transfer the call to the appropriate person or take a message which will be relayed via email to the appropriate person. The expectation is that no calls will go unanswered during the business day (8:00 am to 5:00 pm, Monday -Friday except holidays).

DCDS, its employees and contract attorneys will use Clio, a cloud-based legal practice management solution, for all contract cases. In addition to providing uniformity in record keeping and reporting, Clio will enhance client communication as Clio provides a secure communication portal, linked to individual cases. Clio also provides for the secure exchange of documents between clients and their attorneys; clients with internet access will have 24/7 access to their case file. Clio's calendaring system allows for instant notification to clients of appointments and court appearances and automated reminders by both text message and email.

DCDS intends to establish close working relationships with local service providers such as Bert Nash and DCCCA with the goal of making quicker and more accurate client referrals to local service providers. DFDS will designate one or more contract attorneys to serve as liaisons

with the County, the District Court, the District Attorney's Office and local law enforcement agencies to facilitate consistency in interaction, uniformity in policy and more efficient problem solving.

DCDS recommends further that the County make the following changes related to representation of indigent adults charged with misdemeanor offenses in the Douglas County District Court:

1. The County budget or set aside funds for ADSAP evaluations for indigent adults charged with misdemeanor offenses in the Douglas County District Court. In the event a DCDS client needs an ADSAP evaluations, an application or motion will be made to the court for the costs to be paid as an expense of the case. The client will still be responsible for the repayment of the cost (unless subsequently waived) but the case will not be unnecessarily delayed because the client does not have the funds to pay for the required evaluation.
2. The County budget or set aside funds for Domestic Violence Offender Assessment for indigent adults charged with misdemeanor offenses in the Douglas County District Court. In the event a DCDS client needs a Domestic Violence Offender Assessment, an application or motion will be made to the court for the costs to be paid as an expense of the case. The client will still be responsible for the repayment of the cost (unless subsequently waived) but the case will not be unnecessarily delayed because the client does not have the funds to pay for the required assessment.
3. The County establish a standard attorney fee reimbursement amount, e.g., \$400, per case. The reimbursement amount is the amount that indigent adults charged with misdemeanor offenses in the Douglas County District Court will be required to reimburse the County

for their court-appointed representation unless the case is dismissed or reimbursement is waived by the court. The reimbursement of the cost of ADSAP evaluations and Domestic Violence Offender Assessments paid for by the County would be assessed in addition to the standard reimbursement amount unless the case is dismissed, or reimbursement is waived by the Court.

4. The County budget or set aside \$4,000 per year, per member, to compensate the Policy Board members.
5. The County establish a private working space within the District Court for the exclusive use by DCDS attorneys and employees to meet with clients confidentially. DCDS would be responsible for providing all necessary computer equipment, printers/scanners, telephone equipment and office supplies. The County would provide the furniture, internet access and incidentals.

CONTRACT FOR PUBLIC DEFENSE SERVICES

Douglas County, Kansas, referred to as “the Contracting Authority,” and Douglas County Defense Services, LLC, referred to hereafter as “the Agency,” agree to the provision of public defense services as outlined below for the period January 1, 2022, to December 31, 2027. The Contracting Authority Administrator is County Administrator Sarah Plinsky, and the Managing Director of the Agency is Shaye Downing.

Following are the underlying basis for the Contract:

- Douglas County has a constitutionally and statutorily mandated responsibility to provide indigent misdemeanor defense services.
- The Contracting Authority desires to have indigent misdemeanor defense services performed for eligible persons entitled to public representation in the Douglas County District Court by the Agency, as authorized by law.
- The Agency agrees to provide, and the Contracting Authority agrees to pay for, competent, zealous representation to its clients as required by the Kansas Rules of Professional Conduct.

The parties agree as follows:

I. DURATION OF CONTRACT

This Contract shall commence on January 1, 2022, and terminate on December 31, 2027, unless extended or terminated earlier in a manner allowed by this Contract.

II. DEFINITIONS

The following definitions control the interpretation of this Contract:

- A. Eligible client means any person who has been determined by the court to be entitled to a court-appointed misdemeanor defense counsel.
- B. Case; Case Completion: A Case shall mean representation of one person on one charging document. In the event of multiple counts stemming from separate transactions, additional case credit will be recognized. Completion of a case is deemed to occur when all necessary legal action has been taken during the following period(s): In criminal cases, from arraignment or first appearance, whichever occurs first, through disposition, from arraignment through the necessary withdrawal of counsel after the

substantial delivery of legal services, or from the entry of counsel into the case (where entry into the case occurs after arraignment or first appearance through no fault of the Agency) through disposition or necessary withdrawal after the substantial delivery of legal services.

- C. Disposition: Disposition in criminal cases shall mean: 1) entry of retained counsel, 2) the dismissal of charges, 3) the entering of an order of deferred prosecution, e.g., diversion, 4) an order or result requiring a new trial, 5) imposition of sentence, or 6) deferral of any of the above coupled with any other hearing on that cause number, including but not limited to misdemeanor probation review, that occurs within 30 days of sentence, deferral of sentence, e.g., diversion, or the entry of an order of deferred prosecution, e.g., diversion. No hearing that occurs after 30 days of any of the above will be considered part of case disposition for the purpose of this Contract except that a restitution hearing ordered at the time of original disposition, whether it is held within 30 days or subsequently, shall be included in case disposition. Disposition includes the filing of a notice of appeal, if applicable.
- D. Other Litigation Expenses: Other Litigation Expenses shall mean those expenses which are not part of the contract with the Agency, including expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for in the appropriate court by motion.
- E. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but is not obtained.
- F. Managing Director. The Agency's Managing Director is the contracting authority for the Agency and is responsible for all coordination with the Contracting Authority concerning this Contract. The Managing Director has no supervisory authority over the Agency's contract attorneys or the cases to which they are assigned.
- G. Managing Attorney. The Agency's Managing Attorney is responsible for the managing the day-to-day operations of the Agency including supervision of Agency employees. The Managing Attorney has no supervisory authority over the Agency's contract attorneys or the cases to which they are assigned.

III. INDEPENDENT CONTRACTOR

The Agency is, for all purposes arising out of this Contract, an independent contractor, and neither the Agency nor its employees or contractors shall be deemed employees of the Contracting Authority. The Agency shall complete the requirements of this Contract according to the Agency's own means and methods of work, which shall be in the exclusive charge and control of the Agency, and which shall not be subject to control or supervision by the Contracting Authority, except as specified herein.

IV. POLICY BOARD

Oversight of the Agency and the attorneys it contracts with in matters such as interpretation of indigent defense standards, reasonable caseloads, and response to community and client concerns, shall be provided by the Policy Board. The Policy Board shall be appointed by the Agency, subject to approval by Contracting Authority and, shall consist of 3-5 diverse members, a majority of which shall be licensed attorneys. A representative of the Contracting Authority, the Agency Managing Director and the Agency Managing Attorney will meet regularly, i.e., at least 4-times per year, with the Policy Board, and such other times as necessary.

V. AGENCY'S EMPLOYEES AND EQUIPMENT

The Agency agrees that it has secured or will secure at the Agency's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract.

VI. MINIMUM QUALIFICATIONS FOR AGENCY CONTRACT ATTORNEYS

- A. Every Agency contract attorney shall satisfy the minimum requirements for practicing law in Kansas as determined by the Kansas Supreme Court. Ten hours of each year's required continuing legal education credits shall be in spent in courses relating to criminal law practice or other areas of law in which the Agency provides legal services to eligible clients under the terms of this Contract. The Agency will maintain for inspection on its premises records of compliance with this provision.
- B. Each Agency contract attorney representing a defendant accused of a misdemeanor, must have at least 5 years of professional legal experience, must have served at least 3 years as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been trial counsel and handled a significant portion of the trial in at least 5 criminal cases that have been submitted to a jury.
- C. Failure on the part of the Agency to use staff with the appropriate amount of experience or to supervise appropriately its contract attorneys shall be considered a material breach of this Contract.

VII. PERFORMANCE REQUIREMENTS

The number of cases for which such services will be required is the amount specified on Worksheet A, subject to the variance terms specified in Section VII (Variance). Any material breaches of this agreement on the part of the Agency or the Contracting Authority may result in action as described in Section XVIII (Corrective Action) or Section XIX (Termination and Suspension).

The Agency agrees to provide representational services in the following types of cases:

- Indigent Adult Misdemeanors
- Care & Treatment

The Agency agrees to staff its cases according to the following provisions:

- A. Continuity of representation at all stages of a case, sometimes referred to as “vertical” representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. The Agency agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases assigned in this Contract. Nothing in this section shall prohibit the Agency from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. The Agency agrees that it will attempt to make contact with all clients no later than arraignment or first appearance unless inapplicable and then in those cases within 1 working day of notification of case assignment.
- C. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Agency agrees to screen all cases for conflict upon assignment and throughout the discovery process, and to notify promptly the court when a conflict is discovered that cannot be resolved by assigning a different contract attorney to the case. The Agency will refer to the Kansas Rules of Professional Conduct and to the American Bar Association Standards for Criminal Justice in order to determine the existence and appropriate resolution of conflicts.
- D. It is agreed that the Agency contract attorneys will maintain average annual caseloads per attorney no greater than the following:

Felony Cases	150
Misdemeanor Cases	400
Juvenile Offender Cases	200
Juvenile Dependency Cases	60
Civil Commitment Cases	250
Contempt of Court Cases	225
Drug Court Cases	200
Appeals	25
Civil Cases	25

These numbers assume that the attorney is assigned only cases that fit into one category. If, instead, an attorney spends half of his/her time on felony cases and half of his/her time on misdemeanor cases, he/she would be expected to carry an annual caseload no

greater than 75 felonies and 150 misdemeanors. If the same attorney works less than full time or splits her time between Contract cases and private business, that attorney would be expected to carry a maximum caseload proportional to the portion of his/her professional time which she devotes to Contract cases. All attorneys who split their time between Contract work and private business as well as work under this contract must report the quantity of hours they devote to private business to the Contracting Authority so that Agency caseload levels may be accurately monitored.

It is assumed that the level of competent assistance of counsel contemplated by this Contract cannot be rendered by an attorney who carries an average annual caseload substantially above these levels. Failure on the part of the Agency to limit its contract attorneys to these caseload levels may be considered to be a material breach of this agreement.

E. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel at the caseload levels described above. The parties agree and expect that at a minimum the Agency will employ support staff services for its attorneys at a level proportionate to the following annual caseloads:

- One full time Legal Assistant for every 600 Misdemeanor Cases
- One contract Spanish speaking immigration attorney to serve as co-counsel on any case involving (a) possible immigration consequences, and (b) any case involving a client whose primary language is Spanish and does not speak fluent English.

It is expected that support staff will be paid at a rate commensurate with their training, experience and responsibility, at levels comparable to the compensation paid to persons doing similar work in public agencies in the jurisdiction. The Agency may determine the means by which support staff is provided. The use of interns or volunteers is acceptable, as long as all necessary supervision and training is provided to ensure that support services do not fall below prevailing standards for quality of such services in this jurisdiction.

The parties may agree that the Agency shall employ additional support staff in accordance with recommendations of the National Advisory Commission on Criminal Justice Standards and Goals (NAC) to support the mission of providing indigent misdemeanor defense services for eligible persons entitled to public representation in the Douglas County District Court. In the event such an agreement is reached, the County agrees to pay the Agency the additional annual payments per position as follows:

- One full-time Legal Assistant/Paralegal for every 600 Misdemeanor Cases - \$75,574
- One full-time Social Worker/Social Service Caseworker for every 600 Misdemeanor Cases - \$89,074

- One full-time Investigator for every 600 Misdemeanor Cases - \$68,824

The cost of additional support staff is based upon the estimates set forth on pages 68-69 of “A Report On The Status of Public Defense In Kansas”, September 2020, The Board of Indigents’ Defense Services. [Report 9-30-2020.pdf \(sbids.org\)](#)

Significant Changes

Significant increases in work resulting from changes in court operations shall not be considered the Agency's responsibility within the terms of this Contract. Any requests by the courts for additional attorney services because of changes in court operations will be negotiated separately by the Agency and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

VIII. VARIANCE

The Agency and the Contracting Authority agree that the actual number of cases assigned under this contract may vary from the numbers agreed on Worksheet A by the following levels:

Monthly Variance	20%
Quarterly Variance	15%
Semi-Annual Variance	15%
Yearly Variance	5%

Any deviation in the number of cases assigned that is within the limits above shall not result in alteration of payment owed to the Agency by the Contracting Authority and shall not be the cause of renegotiation of this Contract except as provided in Section XII (Requests for Modifications). The Contracting Authority agrees to make good faith efforts to keep the number of cases assigned within the variance level. In no event shall the Agency be required to accept cases above the level of the variance, even for extra compensation, if doing so would imperil the ability of the Agency’s attorneys to maintain the maximum caseload standards provided in Section VI (Performance Requirements).

IX. ATTORNEY TRAINING

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Agency shall provide sufficient training, whether in-house or through a qualified provider of CLE, to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules.

X. ATTORNEY EVALUATION

The Agency Policy Board shall evaluate the professional performance of Agency's contract attorneys annually. Evaluations should include monitoring of time and caseload records, review of case files, and in court observation. The Agency shall make available to Contracting Authority its evaluation criteria and evidence that evaluations were conducted, although all evaluations are to be confidential.

XI. COMPENSATION AND METHOD OF PAYMENT

- A. For the term of this contract, the Contracting Authority shall pay the Agency a rate of \$525,000 per annum for the caseload specified on Worksheet A, plus or minus the variance agreed to in Section VII (Variance). Payments will be made on a monthly basis. It is possible that the actual amount of compensation will vary according to other terms of this Contract. The parties contemplate that the attorneys working under this Contract will be compensated comparably to prosecutors of similar experience and responsibility.
- B. If services in addition to those called for by this Contract are required because of unexpected increases in annual caseload(s), the Contracting Authority shall provide supplemental funding to the Agency at a rate to be negotiated which is commensurate with the rate paid under this Contract and the actual cost to the Agency of providing the extra service. This provision in no way limits the right of the Agency to refuse to accept cases in excess of the agreed caseload and variance as described in Section VII (Variance).
- C. If the number of cases assigned by the Contracting Authority falls below the agreed caseload and variance, the Contracting Authority will remain liable for the full rate agreed unless it has complied with the provisions in Section XII (Request for Modifications).
- D. In the event of Agency failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the Contracting Authority reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the Contracting Authority's right to termination as provided in Section XIX of this Contract.

XII. REQUESTS FOR CONTRACT MODIFICATIONS

The Contracting Authority shall evaluate the number of cases assigned to the Agency and make projections as to the number of cases that will be assigned to the Agency in future months. These projections will be provided to the Agency on a quarterly basis as specified in Section VII (Variance). If the projection indicates that the cases assigned to the Agency will exceed the variance, the Contracting Authority will negotiate with the Agency for

supplemental funding to cover the increased caseload, commensurate with the rate paid in this Contract and the actual cost of providing representation. The Agency shall have the right without penalty to refuse to accept additional cases beyond the agreed caseload and variance in order to preserve its ability to manage the caseloads of its attorneys as specified in Section VII (Variance).

If the Contracting Authority determines that forces beyond its control such as an unexpected decline in availability of cases for assignment will require the number of cases assigned to the Agency to drop below the agreed caseload and variance, the Contracting Authority may request renegotiation of the rate to be paid under this contract in writing no less than 30 days prior to the date that any change would become effective. Both parties agree in these circumstances to negotiate in good faith for a new rate proportionate to the rate paid under this Contract, taking into account the expenses incurred by the Agency and the Agency's opportunity to realize cost savings and devote resources to other work.

In addition, the Agency may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Agency finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Agency budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such request within 30 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Agency within 30 days of the finding of the request that the supplemental funds shall not be available.

XIII. REPORTS AND INSPECTIONS

The Agency agrees to submit to the Contracting Authority the following reports at the times prescribed below. Failure to submit required reports may be considered a breach of this contract and may result in the Contracting Authority withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures in Section XVIII.

A. Position Salary Profile

The Agency shall submit to the Contracting Authority on the last working day in January and by the 15th day of the first month of each subsequent quarter, a profile of positions for support staff who perform work pursuant to this Contract. The report will designate the name and salary for each employee in a format to be provided. The Contracting Authority will not release this information except as required by law.

B. Caseload Reports

By the seventh day of the month, the Agency will report the number of cases completed in the past month, separated by category, to the Contracting Authority Administrator.

C. Annual Subcontract Attorney Use Report

If the Agency uses any subcontract attorneys in accordance with Section XXI (Assignment and Subcontracting), the Agency shall submit to Contracting Authority a summary report.

D. Bar Complaints

The Agency will immediately notify the Contracting Authority in writing when it becomes aware that a complaint lodged with the state disciplinary administrator has resulted in public discipline of any attorney who is a member of the Agency's staff or working for the Agency.

E. Inspections

The Agency agrees to grant the Contracting Authority full access to materials necessary to verify compliance with all terms of this Contract. The Agency agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the Contracting Authority agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement.

XIV. ESTABLISHMENT AND MAINTENANCE OF RECORDS

- A. The Agency agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Agency on each case.
- B. The Agency agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Agency for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. The Agency shall have its annual financial statements relating to this Contract audited by an independent Certified Public Accountant and shall provide the Contracting Authority with a copy of such audit no later than the last working day in July. The independent Certified Public Accountant shall issue an internal control or management letter and a copy of these findings shall be provided to the Contracting Authority along with the annual audit report. All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. Audits shall be prepared in accordance with Generally Accepted Auditing Standards and shall include

balance sheet, income statement, and statement of changes in cash flow.

- D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Contracting Authority.

XV. HOLD HARMLESS AND INDEMNIFICATION

- A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Agency to Agency employees or others by reason of the Contract. The Agency shall protect, indemnify, and save harmless the Contracting Authority, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, occurring or resulting from Agency's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract.
- B. The Contracting Authority shall indemnify and hold harmless the Agency and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omission of the Contracting Authority, its officers, agents, and employees, or any of them, relating or arising out of the performance of this Contract. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Agency, the Contracting Authority shall defend the same at its sole cost and expense and if a final judgment is rendered against the Agency and the Contracting Authority and their respective officers, agents, and employees, or any of them, the Contracting Authority shall satisfy the same.

XVI. INSURANCE

Without limiting the Agency's indemnification, it is agreed that the Agency shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

A. General Liability Insurance

The Agency shall maintain continuously public liability insurance with limits of liability not less than: \$250,000 for each person, personal injury, \$500,000 for each occurrence, property damage, liability, or a combined single limit of \$500,000 for each occurrence, personal injury and/or property damage liability.

Such insurance shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. The Agency shall provide certificates of insurance or, upon written request of the Contracting Authority, duplicates of the policies as evidence of insurance protection.

B. Professional Liability Insurance

The Agency shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their professional services in the performance of this Contract. For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

Such insurance shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. The Agency shall provide certificates of insurance or, upon written request of the Contracting Authority, duplicates of the policies as evidence of insurance protection.

C. Automobile Insurance

The Agency shall maintain or ensure that its employees and agents maintain policies of insurance covering any automobiles owned, leased, hired, borrowed or used by any employee, agent, subcontractor or designee of the Agency during the course of their performance of this Contract.

The Agency shall provide certificates of insurance or, upon written request of the Contracting Authority, duplicates of the policies as evidence of insurance protection.

D. Workers' Compensation

The Agency shall maintain Workers' Compensation coverage as required by law.

The Agency shall provide a certificate of insurance or, upon written request of the Contracting Authority, a certified copy of the policy as evidence of insurance protection.

XVII. EVALUATION GUIDELINES

The Contracting Authority will review information obtained from the Agency to monitor Agency activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

XVIII. CORRECTIVE ACTION

If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The Contracting Authority will notify the Agency in writing of the nature of the breach.
2. The Agency shall respond in writing within 5 working days of its receipt of such

notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.

3. The Contracting Authority will notify the Agency in writing of the Contracting Authority's determination as to the sufficiency of the Agency's corrective action plan. The determination of the sufficiency of the Agency's corrective action plan will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Contracting Authority Executive. The Contracting Authority agrees that it shall work with the Agency to implement an appropriate corrective action plan.

In the event that the Agency does not respond to the Contracting Authority's notification within the appropriate time, or the Agency's corrective action plan for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part pursuant to Section XIX (Termination and Suspension).

In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Agency which is directly related to the breach of the Contract until the Contracting Authority is satisfied the corrective action has been taken or completed as described in Section XI (Compensation and Method of Payment).

XIX. TERMINATION AND SUSPENSION

- A. Subject to the provision of Section XVIII of this Contract, the Contracting Authority may terminate this Contract in whole or in part upon 30 days' written notice to the Agency in the event that:
 1. The Agency substantially breaches any duty, obligation, or service required pursuant to this Contract,
 2. The Agency engages in misappropriation of funds; or
 3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract pursuant to Section XIX. A.1, the Contracting Authority shall provide the Agency written notice of termination, which shall include the reasons for termination and the effective date of termination. The Agency shall have the opportunity to submit a written response to the Contracting Authority within 10 working days from the date of the Contracting Authority's notice. If the Agency elects to submit a written response, the Contracting Authority

Administrator will review the response and make a determination within 10 days after receipt of the Agency's response. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Contracting Authority Executive. In the event the Contracting Authority Executive reaffirms termination, the Contract shall terminate in 10 days from the date of the final decision of the Contracting Authority Executive. The Contract will remain in full force pending communication of the Contracting Authority Executive to the Agency. A decision by the Contracting Authority Executive affirming termination shall become effective 10 days after it is communicated to the Agency.

- B. The Agency reserves the right to terminate this Contract with cause with 30 days written notice should the Contracting Authority substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Agency terminates this Contract for reasons other than good cause resulting from a substantial breach of this Contract by the Contracting Authority, the Agency shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contracting Authority Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.
- C. In the event of the termination or suspension of this Contract, the Agency shall continue to represent clients that were previously assigned, and the Contracting Authority will be liable for any payments owed for the completion of that work. The Contracting Authority Administrator may request that the Agency attempt to withdraw from any case assigned and not completed. Should a court require, after the Agency has attempted to withdraw, the appearance of counsel from the Agency on behalf of any client previously represented by the Agency where such representation is no longer the obligation of the Agency pursuant to the terms of this Contract, the Contracting Authority will honor payment to the assigned attorney at the rate of \$100 per hour upon judicial verification that continued representation is required.
- D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Agency shall return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Agency by the Contracting Authority.
- E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees.

XX. ASSIGNMENT/SUBCONTRACTING

The Agency shall not assign any portion of this Contract without consent of the Contracting Authority. Any consent sought must be requested by the Agency in writing not less than 5 days prior to the date of any proposed assignment, provided that this provision shall not apply to subcontracts with attorneys to perform work pursuant to this Contract.

XXI. RENEGOTIATION

Either party may request that the provisions of this Contract be subject to renegotiation. After negotiations have occurred, any changes which are mutually agreed upon shall be incorporated by written amendments to this Contract. Oral representations or understandings not later reduced to writing and made a part of this agreement shall not in any way modify or affect this agreement.

XXII. ATTORNEYS' FEES

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

XXIII. NOTICES

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be:

1. In writing; and
2. Personally served on the Managing Director of the Agency and the Administrator of the Contracting Authority, as identified on page 1 of this Contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

XXIV. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

XXV. NONDISCRIMINATION

During the performance of this Contract, neither the Agency nor any party subcontracting with the Agency under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement. The Agency shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

XXVI. CONFLICT OF INTEREST

Interest of Members of Contracting Authority and Agency

No officer, employee, or agent of the Contracting Authority, or the State of Kansas, or the United States Government, who exercises any functions or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Agency.

Agreed:

Agency

Contracting Authority

Date: _____

Date: _____

Worksheet A

The Agency agrees to accept the following cases from the Contracting Authority for the duration of this Contract, subject to the terms of this Agreement:

<u>Case Type</u>	<u>Annual Caseload</u>	<u>Monthly Caseload</u>
Adult Misdemeanor	600	50
Care & Treatment	120	10