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TO: Joe Nigro, Lancaster County Public Defender
Lancaster County Indigent Defense Advisory Committee
FROM: Milo Mumgaard, Executive Director, Legal Aid of Nebraska
DATE: June 15, 2018
RE: Proposed Three-Year Renewal of Agreement Between Lancaster County and
Legal Aid of Nebraska to Provide Appointed Legal Representation of Indigent
Parents and Juveniles in Lancaster County Separate Juvenile Court Proceedings

Legal Aid of Nebraska (Legal Aid) strongly desires to continue to provide appointed, cost-effective civil legal services in the Separate Juvenile Courts under contract with Lancaster County for indigent children and parents. Legal Aid seeks to now renew the present three year contract, as amended, with Lancaster County for an additional three year term, with only one slight modification, for the term 2018-2021.

The following is a description of the proposed renewal terms, for your use and for sharing with other county officials, including the Indigent Defense Advisory Committee.

Legal Aid has been honored to provide professional, high quality and well respected appointed representation of indigent juveniles and parents in the Separate Juvenile Court of Lancaster County for over 25 years. In the last three years, Legal Aid has represented thousands of struggling children and families in Lancaster County, and is proud of our work. Our legal staff has over seventy years of collective experience in this representation, daily providing efficient, cost-effective service to needy clients in Lancaster County. Legal Aid's mission is to address the underlying conditions of poverty faced by our clients through high quality civil legal services, using our skills to help them gain hope, opportunity, and increased family stability. Our appointed work in the Separate Juvenile Court in Lancaster County is doing just that for needy local Lancaster County residents every day.

Legal Aid is proud to provide appointed legal services that meets and exceeds the professional standards established by the Nebraska Supreme Court for juvenile and parent representation, while also partnering with the courts to obtain more speedy and just results. Legal Aid also knows its experienced legal services helps to lower other costs to Lancaster County (by, for example, reducing the incidence of domestic violence, better meeting children's needs, and gaining income support and benefits for indigent families), and provides other less tangible benefits to the county through our continual commitment to improving the administration of justice.

Legal Aid, as an experienced non-profit with this mission, is able to provide Lancaster County this considerable and expert appointed legal service for far less cost than other options available to the county. In each appointed case, this necessary civil legal service includes investigations, legal research, client and court meetings, required home visits, and representation in juvenile

court hearings, trials, and appeals. This representation includes involvement in procedures that require significant additional time per case, such as regular appointments to cases in “problem solving courts” such as Family Drug Court.

Under the present contract with Lancaster County, as amended, Legal Aid is able to deliver this very high level of service for a cost far below what Lancaster County otherwise is required to pay for appointed private counsel. In fact, Legal Aid, on an hourly basis, has costs consistently 25% or more less than with appointed private counsel. Legal Aid is able to control its actual costs as a non-profit, thereby enabling this legal service at such a low and reasonable actual legal cost.

In August, 2017, this cost effective approach to indigent juvenile representation was recognized by the Lancaster County Commissioners, and the existing three year contract was amended to reflect Legal Aid’s “actual costs” of representation per hour. This cost is \$48 per hour, which under the amended agreement equates to a compensation/reimbursement of \$56,016 per month.

Legal Aid proposes to renew and continue for a new three year period the language of the 2015-2018 contract, as amended in August, 2017 (attached).¹ This renewal would continue representation to indigent clients in the same proceedings, affecting the same statutory issues, with the same number of new case limits and total number of active/pending cases, and the present compensation and reimbursement payments, as amended in 2017.

We think the present language and payment schedules effectively controls the county’s financial obligations, insures timely and available appointed counsel for the number of cases required, insures actual costs of representation are being met while remaining highly cost-effective to Lancaster County, and also allows Legal Aid the ability to internally manage its caseload while also assuring the county it is receiving high quality, cost effective representation.

This equitable situation has come about through a lot of effort from Lancaster County Separate Juvenile Court judges, Lancaster County officials, juvenile justice staff, your office, and others involved in fostering high quality indigent defense in Lancaster County. In particular, the amended compensation levels now reflecting the actual cost of Legal Aid’s provision of these appointed services, allowing Legal Aid to remain at least 25% below the costs of other appointed counsel, creates great stability going forward. Legal Aid thanks everyone for this support and is pleased to continue to be a part of this outstanding shared effort.

In this light then, Legal Aid proposes only one modification to the contract for a three renewal:

- Counting “Problem Solving Court” Appointed Cases. When appointed to representation in Family Drug Court, Legal Aid is, on average, dedicating additional representation time in comparison to other juvenile court appointments, an inevitable result of the additional representation responsibilities associated with this court process. We share the conviction that Family Drug Court is an effective process and intervention. Legal Aid wants to be a major part of the continuing efforts to use more “problem solving courts” now and in the

¹ “Agreement Between Lancaster County and Legal Aid of Nebraska,” County Contract No. C-15-0316 (July 7, 2015); Amendment, County Contract No. C-19-0937 (December 12, 2017).

future, as they create new positive opportunities and options for our clients and promise higher rates of success and costs savings for the county. Legal Aid carefully tracks these appointed cases (for example, as of June, 2018, there are approximately 60 active/pending appointed cases in Family Drug Court) and the time commitments associated with Family Drug Court. In general these cases, over the months this representation is provided, requires a dedication of approximately fifty-percent more staff time than non-Family Drug Court appointments.

- Given the amount of time necessary to appropriately represent clients in such “problem solving courts,” Legal Aid proposes to slightly modify the language of the contract to now “count” each “problem solving court” appointment in the Lancaster County Separate Juvenile Court, as 1.5 cases towards Legal Aid’s overall new case and maximum active/pending cases, rather than as 1 case for all other cases. This will not have any major impact on the contract’s maximums, given the limits already in the contract and current case trends, but will more accurately reflect the nature of the representation commitment and the devotion of resources.

We look forward to negotiating this renewal contract in the next few weeks. Legal Aid is not only proud of our trained, well supported staff delivering high quality representation and services to Lancaster County, but we know our non-profit services will always be the lower cost option for the county. We are honored to continue to provide appointed civil legal services to indigent children and parents under our contract with Lancaster County, and we are pleased to be a major part of how Lancaster County is serving its needy children, parents, and families.

I look forward to our further discussions, and please let me know at any time if you, members of the Indigent Defense Advisory Committee, or any county official need any additional information.

Attachments:

- “Agreement Between Lancaster County and Legal Aid of Nebraska,” Lancaster County Contract No. C-15-0316 (July 7, 2015)
- Amendment, Lancaster County Contract No. C-19-0937 (December 12, 2017)

**AGREEMENT BETWEEN LANCASTER COUNTY
AND LEGAL AID OF NEBRASKA**

This Agreement is entered into on this 7 day of July, 2015, by and between the County of Lancaster, Nebraska, hereinafter referred to as "the County" and Legal Aid of Nebraska, hereinafter referred to as "the Contractor."

WHEREAS, indigent parents and juveniles in Juvenile Court proceedings initiated pursuant to Neb. Rev.Stat.§43-247(1),(2),(3)(a)(b) and (c), (4),(5),(6),(7),(8),(9)(10) and (11) are entitled to legal representation; and

WHEREAS, Legal Aid of Nebraska, wishes to perform the responsibilities and obligations of the agreement; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the parties as follows:

- 1) Term. The term of this Agreement shall be for a period of thirty-six months, beginning July 1, 2015, through June 30, 2018.
- 2) Purpose. The purpose of this Agreement is to provide legal representation to indigent parties in proceedings arising pursuant to Neb. Rev. Stat. §43-247(1), (2), (3)(a)(b) and (c), (4),(5),(6),(7),(8), (10) and (11), in the Separate Juvenile Court of Lancaster County.
- 3) Representation. The Contractor shall be responsible for providing legal representation as provided herein. The Contractor shall provide, through the services of attorneys, and paralegals, where appropriate, all necessary legal services, including but not limited to investigation, legal research, and representation at hearings, in the following types of cases:
 - (a) Abuse or Neglect Cases. Cases filed pursuant to Neb. Rev. Stat. §43-247 (3)(a), (5),(6),(7) and (8) where the Contractor is appointed either Guardian Ad Litem or Attorney. The maximum number of new cases assigned per contract year shall not exceed 220. The total number of active/pending cases shall not exceed 640. If the Contractor has reached the case maximum provided herein and the Juvenile Court wishes to appoint the Contractor to a new case and the Contractor agrees to accept the additional case, the Contractor shall be compensated an additional \$1,778.00 for each case in the month of the appointment. For purposes of this paragraph, "case" shall mean one client or one group of clients in active/pending cases (including wards(s) when serving as guardian ad litem) regardless of the number of petitions, motions, or supplemental pleadings filed in matters under Neb. Rev. Stat. §43-

247 (3)(a), (5),(6), (7) and (8) (but does not include appeals) taken in such matters, involving that client or group of clients in the Separate Juvenile Court of Lancaster County. "Active/pending cases" shall mean cases in which the Contractor is still the attorney of record for a party and the Court has not dismissed the case or terminated jurisdiction over the case.

1. If serving as the Guardian Ad Litem in a (3)(a) case the Contractor may be appointed by the Court in any (3)(b) case relating to the child.
2. If serving as Attorney in a (3)(a) case, the Contractor may be required to provide legal services in matters of establishment of a child support order concerning the client's support of the child(ren) involved in the (3)(a) case. If a paternity case is filed pursuant to 43-247 (10), and the Contractor is serving as Attorney in a pending (3)(a) case involving the client's same child(ren), the Contractor may be required to attend hearings on the paternity case, but only with regard to the issues of paternity and support, and not with regard to other issues such as custody or visitation.
3. If a client indicates a desire to file an appeal of a final order, the Contractor will notify the Court, and the Court may either appoint separate counsel to represent the client in an appeal, or authorize the Contractor to pursue the appeal, in which case the appeal will be counted as a separate Abuse/Neglect case under this section.

(b) Law Violations and Status Offenses. Cases filed pursuant to §43-247 (1), (2), 3(b), 3(c), (4) and (11), in which the Contractor is appointed as either Guardian Ad Litem or Attorney. The maximum number of new cases assigned per contract year shall not exceed 230. The total number of active/open pending cases shall not exceed 350. For purposes of this paragraph, "case" shall mean each new petition, supplemental petition, or motion to revoke probation regardless of whether it is within the same docket and page. "Active/pending cases" shall mean cases in which disposition has not been entered or has been entered with a future court date scheduled. In the event the Contractor has reached the maximum level for new or active/pending cases, they will be paid an additional \$295 for each new law violation/3b case, if they agree to accept the case. If a client indicates a desire to file an appeal of a final order, the Contractor will notify the Court, and the Court may either appoint separate counsel to represent the client in an appeal, or authorize the Contractor to pursue the appeal, in which case the appeal will be counted as a separate Law Violation/Status case under this section.

- (c) Payment of Exceeding Maximum Number of Cases. If Contractor exceeds the maximum number of new cases outlined above, but is below the maximum number of new cases in the other Subparagraph ((a) or (b)), the payment for accepting cases over the maximum will be offset by the amount represented by the number of cases below the maximum multiplied by the per case rate.
- 4) The Contractor further agrees that it shall notify the Lancaster County Public Defender's Office and the Separate Juvenile Court immediately upon reaching any of the caseload maximums specified in the agreement. Contractors further agree not to accept appointments from the Separate Juvenile Court outside of this agreement.
 - 5) The Contractor shall not represent parties under this Agreement in any activity prohibited by, or inconsistent with the requirements of Section 504(a) (11) of 110 Stat. 1321 (1996) and 45 CFR part 1626 of the Legal Service Corporation (LSC) Regulation governing representation of aliens and Section 504(a)(15) and 45 CFR part 1637 of the LSC Regulation governing prisoner litigation. Contractor agrees to notify the Separate Juvenile Court of Lancaster County and the Lancaster County Public Defender of its inability to represent a client because of these requirements. Contractor shall not be responsible for the representation of such clients but if Contractor is relieved from representation by the Court because of these requirements, before adjudication of the case, the case shall not count against contractor's new case limit for the year. If the Contractor is so relieved of representation in a year subsequent to the year of appointment, the contractor agrees to accept an additional case for the subsequent year.
 - 6) Indigency. The determination of indigency and need for representation shall be made by the Judges of the Separate Juvenile Court of Lancaster County. Once this determination is made, the Judges may appoint the Contractor as Attorney.
 - 7) Compensation. The County agrees to pay the Contractor the sum of \$1,337,030 to be paid upon presentation of a statement for reimbursement and documentation that services have been provided pursuant to this agreement as follows: \$38,250.83 per month for the first 35 months of this agreement and \$38,251.00 for the final month of the agreement. Statements will be submitted to the County for review prior to any payment for services. The parties agree that this agreement does not provide compensation in the form of a retainer. The Contractor agrees that it shall not be paid until services have been provided to the County as provided in this agreement. The parties agree that the compensation paid by the County to the Contractor covers all ordinary costs of representation in these cases including but not limited to items such as overhead costs, telephone costs, postage, supplies, support staff costs, photocopying expenses and attorney's fees. The parties also agree that incidental

costs, which include but are not necessarily limited to, depositions, medical records duplication, interpreters, and expert witnesses, are outside the scope of this Agreement. Contractor shall apply to the Separate Juvenile Court of Lancaster County to obtain reimbursement for any of these necessary incidental costs.

- 8) Records. Contractor shall provide the Lancaster County Public Defender with information regarding caseloads, attorney time, and case status, on a monthly basis, in a format approved by the Lancaster County Public Defender.
- 9) Code of Conduct. Contractor agrees that all attorneys working under this Agreement under the employ of Contractor shall meet minimum qualifications including being licensed by the Nebraska State Bar Association. Attorneys employed by Contractor shall also comply with all legal and ethical requirements of attorneys in representation of these types of cases, including the Nebraska Supreme Court's Guidelines for Guardian Ad Litem for Juveniles in Juvenile Court Proceedings. Contractor will provide legal services to all specified clients in a professional, skilled manner, consistent with minimum standards set for by the American Bar Association, any applicable State Bar Association standards, the Canons of Ethics for Attorneys in the State of Nebraska, and case law and applicable court rules defining the duty of counsel and the rights of clients in the types of cases handled by Contractor.
- 10) Conflicts. Contractor agrees to notify the Separate Juvenile Court of Lancaster County of any conflict of interest it may have regarding the representation of a client under this Agreement. Contractor shall not be responsible for the representation of such clients or for the payment of any private attorney fees. If a conflict is declared or the client retains private counsel and contractor is relieved from representation, by the Court, before adjudication of the case, the conflict case shall not count against contractor's new case limit for the year. If the Contractor is so relieved of representation in a year subsequent to the year of appointment, the contractor agrees to accept an additional case for that subsequent year.
- 11) Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the County and employees of the County shall not be deemed to be employees of the Contractor. The Contractor and the County shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the County's employees shall be entitled to any salary or wages from the other party or to any benefits made to their employees, including, but not limited to, overtime, vacation, retirement benefits, worker's compensation insurance, unemployment insurance for its employees, and for payment

of all federal, state, local, and any other payroll taxes with respect to its employees' compensation.

12) Assignment. Contractor shall not assign its duties and responsibilities under this Agreement without the express written permission of the County.

13) Hold Harmless. Each party agrees to indemnify and hold harmless to the fullest extent allowed by law, the other party from and against any and all claims, damages, losses, and expenses (including court-ordered attorneys' fees) arising out of or resulting from the negligent or wrongful acts of omissions of their principals, officers, or employees in the performance of this Agreement. Further, each party shall maintain a policy or policies of insurance sufficient in coverage and amount to pay any judgments or related expenses resulting from or in conjunction with any such claims. Each party agrees that it will be responsible for its own acts and omissions and the results of its own acts and omissions, and shall not be responsible for the acts or omissions of the other party. The parties agree to assume all risk and liability for injury to person or property resulting in any manner from each party's own acts or omissions related to the Agreement, including acts or omission by each party's own agents or employees related to this Agreement. Liability includes any claims, damages, losses, and expenses (including court-ordered attorneys' fees) arising out of or resulting from performance of this Agreement, that result in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, property, including any resulting loss of use.

14) Severability. If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

15) Equal Employment Opportunity. In connection with the carrying out of activities provided herein, Contractor shall not discriminate against an employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, marital status or receipt of public assistance.

16) Termination. This Agreement may be terminated at any time by either party by giving one hundred twenty (120) days written notice. Contractor agrees that all files shall be kept current or made current upon the effective date of termination. Contractor further agrees that in the case of termination of the agreement, all client files, or copies thereof, shall be turned over to subsequent counsel. Contractor also agrees to maintain and provide for the orderly transition of client case files and cases to subsequent counsel consistent with Contractor's responsibilities under the Code of

Professional Responsibility. Contractor agrees to file Motions to Withdraw in the case of termination of this agreement.

- 17) Modification. The parties agree that any material change of circumstances may necessitate the modification of this Agreement. The parties are aware that legislation is pending that would increase the responsibilities of Guardians Ad Litem in Juvenile Court, and if such legislation becomes law, the Contractor reserves the right to request a re-negotiation of the terms contained herein
- 18) Applicable Law. This agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of laws. In the event that any provision of this agreement conflicts with the laws of the State of Nebraska, or if any such provision is held invalid by a court with jurisdiction over the parties to this agreement, said agreement may be immediately terminated by either party.
- 19) Audit and Inspection. Contractor shall permit the Finance Officer of the County or his/her authorized representative(s) to inspect all materials and to audit the books, records and accounts of Contractor pertaining to this Agreement, exclusive of case files of clients.
- 20) Insurance. Contractor agrees that it will maintain any applicable malpractice and professional liability insurance during the term of this agreement. Contractor also agrees to provide the Lancaster County Public Defender's Office with a certificate or proof of said insurance. Contractor agrees to notify the County of termination or loss of said insurance immediately.
- 21) This agreement hereby assumes, replaces and rescinds all previous contracts between the parties concerning representation of indigents in the Separate Juvenile Court of Lancaster County.

Executed by the Contractor, this 23 day of June, 2015.

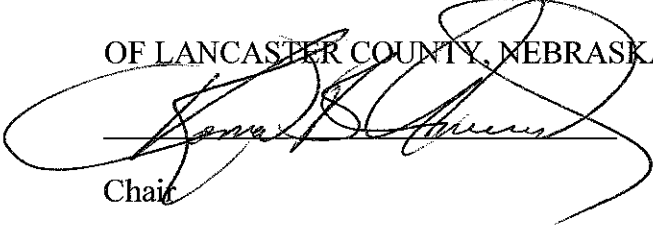
LEGAL AID OF NEBRASKA

BY: Cennett R

Executive Director

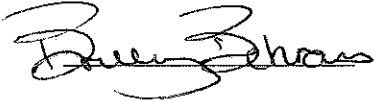
Executed by the Contractor, this 7 day of July, 2015.

BY THE BOARD OF COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA


Chair

APPROVED AS TO FORM:

THIS 7 day of July, 2015,



For Joe Kelly

County Attorney

AMENDMENT

THIS AMENDMENT is made and entered into by and between Legal Aid of Nebraska (hereinafter referred to as "Contractor") and the County of Lancaster, Nebraska, (hereinafter referred to as "County"). The Contractor and the County hereinafter may be referred to collectively as the "Parties," and individually as a "Party."

WHEREAS, the Parties entered into an agreement for the provision of legal services executed by the County on July 7, 2015, under County Contract No. C-15-0316, hereinafter referred to as the "Agreement", which is hereby incorporated herein by this reference; and

WHEREAS, the Parties wish to amend the compensation provisions of the Agreement;

NOW THEREFORE, in consideration of the mutual covenants contained in the Agreement and any and all amendments thereto, including this Amendment, it is agreed by and between the Parties that the following amendment to the Agreement be made:

1. Amend Paragraph 7. Compensation of the Agreement by substituting the following language:
 - 7) Compensation. The County agrees to pay the Contractor the sum of \$1,554,681.58 to be paid upon presentation of a statement for reimbursement and documentation that services have been provided pursuant to this agreement as follows: \$38,250.83 per month for the first 26 months of this Agreement (July 2015 through August 2017) and \$56,016.00 per month for the final 10 months of this Agreement (September 2017 through June 2018). Statements will be submitted to the County for review prior to any payment for services. The parties agree that this Agreement does not provide compensation in the form of a retainer. The Contractor agrees that it shall not be paid until services have been provided to the County as provided in this Agreement. The parties agree that the compensation paid by the County to the Contractor covers all ordinary costs of representation in these cases including but not limited to items such as overhead costs, telephone costs, postage, supplies, support staff costs, photocopying expenses and attorney's fees. The parties also agree that incidental costs, which include but are not necessarily limited to, depositions, medical records duplication, interpreters, and expert witnesses, are outside the scope of this Agreement. Contractor shall apply to the Separate Juvenile Court of Lancaster County to obtain reimbursement for any of these necessary incidental costs.

All other terms of the original Agreement executed between the Parties under County Contract No. C-15-0316, and any and all amendments thereto, not otherwise inconsistent herewith, shall remain in full force and effect.

EXECUTED this 5th day of December, 2017, by Contractor.

BY: 

NAME: D. MILO MUNGARA

TITLE: EXECUTIVE DIRECTOR

EXECUTED this 12 day of Dec, 2017 by County.

BY: THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this 12 day of Dec, 2017

Deputy County Attorney for
JOE KELLY, County Attorney

Jennifer J. Binkema
Deb Schorr
Tom W. Wilson
Bill Argy
Janet ...