

CITY OF LAWRENCE CONTRACT NO. \_\_\_\_\_

AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015,

by and between the City of Lawrence, Kansas, a duly organized municipal corporation, hereinafter referred to as "City," and Fletcher, Rohrbaugh & Chahine, LLP Attorneys at Law, hereinafter referred to as "Contractor."

WHEREAS, City desires to retain legal counsel to provide court appointed indigent defense services;  
and

WHEREAS, Contractor is law firm with licensed attorneys who desire to provide such services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN,  
THE PARTIES AGREE AS FOLLOWS:

1. The services rendered by Contractor shall be the representation of indigent defendants charged with crimes in the Lawrence Municipal Court, and upon appeal to the Douglas County District Court. Representation includes preliminary eligibility screening for court appointed attorney services, although the Court reserves the right to make a final determination of eligibility.

2. Contractor agrees to represent the referred defendants from date of referral to final disposition, including any appeals that may be taken, even if such representation continues beyond termination of this Agreement.

3. Contractor shall prepare all documents, motions, briefs, letters, etc., with its own staff support and materials. It is understood that no office space, equipment, supplies, staff support or payment of expenses of any kind will be provided by the City.

4. The term of this Agreement is from February 1, 2015 through January 31, 2017. The expiration of this agreement does not release Contractor from the representation of defendants previously assigned for representation under this agreement.

5. This Contract may be terminated by either party upon thirty (30) calendar day's prior notice in writing to the other party should the other party fail to substantially perform in accordance with the terms and conditions of this Contract. The City may terminate this Contract immediately, under breach of Contract, if the

Contractor fails to perform in accordance with the terms and conditions herein. In any event, the City shall have the right to terminate this Contract without cause upon thirty (30) days written notice.

6. This Agreement shall be governed by the laws of the State of Kansas and the Codes of the City of Lawrence, Kansas.

7. A waiver by either City or Contractor of any breach of this Agreement shall be in writing. Such written waiver shall not affect the waiving party's rights with respect to any other or future breach.

8. Neither City nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party. Nothing contained herein shall prevent Contractor from employing independent consultants, associates, or subcontractors; however, in such case, Contractor shall be responsible for performance of the Services.

9. Contractor will be paid for the services rendered at a base annual rate of seventy eight thousand dollars (\$78,000) per year. Payment of this amount shall be divided into twelve equal monthly payments of six thousand five hundred dollars (\$6,500.00) per month, following receipt of invoice submitted by Contractor to the Court Manager during the last week of each month. The base number of cases under the contract is four hundred and fifty (450) cases. In the event the number of cases that Contractor provides representation in under this agreement exceeds four hundred and ninety five (495) per year, the contract price shall be adjusted upwards in direct proportion to the contract price. As an example, in the event that Contractor provides representation in five hundred (500) cases, the contract price will increase by 11% (eleven percent) to eighty six thousand five hundred eighty dollars (\$86,500). Any increase in the contract price due to such an increase in cases represented by Contractor shall be payable with the January installment payment. In the event that Contractor completes its representation of a client in a case and withdraws from the case, reappointment in any post-conviction matter in the same case shall be treated as a separate case for the purpose of determining how many clients were represented under this agreement by Contractor.

With regard to probation revocation matters, in the event that the same motion to revoke probation is filed in common with multiple matters and resulting in a common resolution, then this event will count as 1 case for purposes of tallying the number of cases herein above.

10. Contractor agrees that its principals and agents are individually responsible for all required court appearances. Said appearances shall be timely. Contractor will not be found in breach of this Agreement where circumstances such as illness, court conflicts, etc. prohibit the “covering” of an appearance, provided Contractor has made a good faith effort to appear and has obtained a continuance from the Court in advance if unable to appear.

11. Contractor agrees to make arrangements with one or more “Conflict Attorneys” to cover cases in the event Contractor has a scheduling conflict or a conflict of interest. “Scheduling conflict” includes covering a particular court appearance or assigning cases due to workload. The attorneys with whom Contractor contracts to accept said referrals as Conflict Attorney when there is a conflict of interest shall be located in an office separate from Contractor, and there shall be no file sharing between the two, with the exception of Contractor forwarding any materials received from the Court to the Conflict Attorney. In all cases the Conflict Attorney must be duly licensed to practice law in the State of Kansas, be in good standing in the Court, and be covered by professional liability insurance. Contractor shall submit a list of names of said Conflict Attorneys to the Court for approval, along with a valid certificate of insurance for professional liability insurance (see item 17 for additional insurance requirements), and signed agreements from the Conflict Attorneys holding harmless the City of Lawrence, its employees, officers and agents in the same manner as set forth in paragraph 15 herein. Contractor shall notify the Court immediately when it discovers that a conflict exists, and inform the Court regarding the name of the Conflict Attorney to whom the case has been forwarded. Contractor shall be responsible for payment to Conflict Attorney. It is the intent of Contractor to facilitate and support the University of Kansas School of Law clinical programs by having an ongoing case referral relationship with the school. Contractor intends to refer cases to the University of Kansas Law Clinic so that students may represent referred clients under the guidance of qualified staff.

12. To assist in an evaluation of the Court appointment of counsel for indigents program, Contractor will keep a log of all cases assigned, which shall be available for review by Court at any time. The form and format of the log will be mutually agreed to by the parties during the first week of this Agreement. On the 15<sup>th</sup> of every month, Contractor shall forward a list of all new case assignments for the preceding month. On the 15<sup>th</sup> of January of every year, Contractor shall forward a list of all pending cases as of December 31<sup>st</sup> of the preceding year. Contractor shall screen applicants for services using the eligibility guidelines specified by the City and the laws of the State of Kansas.

13. Contractor agrees that all attorneys providing services will be duly authorized to practice law in the state courts of Kansas, and that each will remain so qualified throughout the term of this Agreement.

14. As appointed counsel, Contractor agrees to perform a service and is not working for a pre-determined number of hours per week. Contractor understands that the Court is not creating in it an expectation either current or future contract with the City or the Court beyond the term of this Agreement. Further, it is the intent of the parties to create an independent contractor relationship between them.

15. This is an Agreement with the City of Lawrence for the representation of indigent defendants. This Agreement is entered into under the authority of K.S.A. 12-4405 (2001) as an appointment of counsel for indigent defendants in the City of Lawrence Municipal Court.

16. Contractor agrees to indemnify and hold City harmless from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against City that results from the acts of omissions of Contractor, Contractor's employees, if any, and Contractor's agents.

17. INSURANCE: City shall not be required to purchase any insurance against loss or damage for any property or service to which this Agreement relates. Subject to the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), and the claims provisions of the Code of the City of Lawrence (Section 3.35.010 et seq.), the Contractor shall bear the risk of any loss or damage to any personal property in which Contractor holds title.

18. Contractor shall maintain on file in the Municipal Court at all times during the duration of the agreement, including renewal periods, a current, valid Certificate of insurance that provides Professional

Liability, Automobile Liability and Worker's Compensation (not less than statutory limits) in the following minimum amounts:

AUTOMOBILE LIABILITY

Combined Single Limit	\$300,000.00
Per Occurrence	\$100,000.00
Aggregate	\$300,000.00

19. The parties designate the following people as contact persons for purposes of receiving notices and exchange of information as contemplated by the Statement of Work

For the City:

Honorable Scott J. Miller, Administrative Judge  
City of Lawrence  
Municipal Court  
1006 New Hampshire  
Lawrence, KS 66044

For Contractor:

Fletcher, Rohrbaugh, & Chahine LLP  
Christopher T. Fletcher and/or Hatem B. Chahine  
601 N. Mur-Len  
Olathe, KS 66062

20. This Agreement may be modified or amended by the parties by execution of a document of equal formality.

21. This Agreement supersedes any other prior written or oral agreements between the parties, which are not specifically stated in this paragraph.

22. The Agreement must comply with the applicable provisions of the Kansas Cash Basis Law, K.S.A. 10-1101 *et seq.* The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City's current budget year or from funds made available from any lawfully operated, revenue producing source. In the event the City does not so budget and appropriate the funds for payments due under the agreement in any budget year, the parties acknowledge and agree that they shall be relieved from all obligations, without penalty, under this Agreement. To the extent that the City does so budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.

IN WITNESS WHEREOF, the parties have hereto executed this Agreement as of the day and year first above written.

City of Lawrence, Kansas,  
A Municipal Corporation

By: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Diane M. Trybom  
Acting City Clerk

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Toni R. Wheeler  
City Attorney

  
\_\_\_\_\_  
Contractor's Representative