

ALPENA COUNTY BOARD OF COMMISSIONERS

BOARD ACTION #11

TO: County Clerk, County Treasurer, Public Defender's Office

FROM: Alpena County Board of Commissioners

SUBJECT: **Public Defender Contract**

BOARD ACTION:

ACTION ITEM #CC-2: The Committee recommends to approve the Public Defender Contract (07.01.21/09.30.22) in the amount of \$40,000 per month for each month beginning on July 1, August 1, and September 1, 2021 and then \$41,215.29 per month beginning on the 1st day of each month of October 1, 2021 through September 30, 2022 pending state approval and attorney review.

Moved by Commissioner Gilmet and supported by Commissioner Karschnick to approve the Consent Calendar as amended which includes actions as listed above and filing of all reports. Roll call vote: AYES: Commissioners Gilmet, Karschnick, Peterson, Fournier, Thomson, Kozlowski and Adrian. NAYS: None. Excused: Commissioner Osbourne. Motion carried.

This action was XX APPROVED DISAPPROVED

BY: Ayes: 7 Nays: 0 Excused: 1 Absent: 0 Abstaining: 0

Alpena County Board Chairman's Signature: Robert Adrian

Alpena County Board Vice-Chairman's Signature: _____

Date of the Board Meeting: August 31, 2021

CONTRACTUAL SERVICES AGREEMENT
Public Defender Non-Profit Vendor

This **Contractual Services Agreement** (the "Agreement") made this 1st day of July 2021 between Alpena County (the "**County**") whose address is 720 West Chisholm Street, Suite 7, Alpena MI 49707, and Northeast Michigan Regional Public Defender Office, a IRC 501 C(3) non-profit entity whose current address is 615 W. Chisholm St., Alpena MI 49707 (the "**Contractor**").

Recitals

A. On July 31, 2020 the County approved the Alpena County Compliance Plan for Indigent Defense Standards 1-4 under which the County will transition to a Public Defender model while still maintaining a reduced Managed Assigned Counsel (MAC) system which will pay both District Court and Circuit Court attorneys an hourly rate; and the Compliance Plan for FY 21/22 having been submitted that requires compliance with Standards 1-5; and

B. The MAC system will be directly managed by the Managed Assigned Counsel Administrator who reports to the Alpena County Executive manager; and

C. The Contractor having created a vendor model non-profit IRC 501 C(3) corporation pursuant to Michigan and Federal law and the employees of such corporation having experience providing the type of legal services required of the County under the Compliance Plan submitted to and approved by the Michigan Indigent Defense Commission; and

D. The County desires to engage the Contractor to perform the duties of the Public Defender Office upon the terms and conditions set forth in this Agreement

E. The County having transitioned to a Public Defender Model which is now complete.

THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall become effective July 1, 2021 and shall continue through September 30, 2022.
2. **Services Provided by Contractor.** The Contractor shall be responsible for operating Alpena County's Indigent Criminal Defense Program/Public defender Office in accordance with the Alpena County Compliance Plan for Indigent Defense Standards 1-5 and applicable law. The functions required to be performed in order to manage Alpena County's Indigent Criminal Defense Program/Public defender Office includes all of those requirements laid out in the state grant contract. The Contractor will determine the method, details and means to perform these services, but will be required to provide the County with reports of activities performed on a quarterly basis and at such other times as may be requested.
3. **Compensation for Services.** The County shall pay \$614,583.47 or an amount approved by the MIDC for such services to the Contractor for the services rendered under this Agreement. This payment will be made in three equal monthly installments of Forty Thousand Dollars (\$40,000.00) beginning the 1st day of July 2021 and continuing until September 1, 2021 and twelve monthly installments of Forty-One Thousand Two Hundred Fifteen Dollars and 29 cents (\$41,215.29) beginning on October 1, 2021 and continuing on or about the 1st day of each month thereafter through September 2022. The County may approve an additional amount this Fiscal Year for start-up costs for Computer system, phones, furniture, necessary supplies, etc. as approved by the MIDC.

4. **Contractor Costs.** The fee to be paid to the Contractor set forth in Paragraph 3 above is intended to compensate the Contractor for all expenses they incur to provide for the services required under this Agreement. The Contractor will not be paid or reimbursed for any other office or administrative expenses. If travel is required outside of Alpena County, reimbursement will be made pursuant to the MIDC approved plan and no additional compensation shall be paid by the County.

5. **Other Legal or Indigent Counsel Services.** The County will not allow the contractor or any of their employees to perform other legal or Indigent Defense services. It is further understood and agreed that the Contractor may provide similar services to Montmorency County.

6. **Independent Contractor.** The parties agree and acknowledge that the relationship between the County and the Contractor is that of an independent contractor, and that nothing in this Agreement shall be considered to create an employment relationship between the parties or make the Contractor a County employee subject to County Personnel Policies or eligible for any benefits provided to County employees. The Contractor is solely responsible for the payment of all local, state and federal withholding taxes as well as any other state and federal laws pertaining to workers' compensation, social security and unemployment compensation, and will provide evidence to the County upon request that required contributions are being made in a timely manner.

7. **Termination of Agreement.** In the event that the Contractor fails to carry out their responsibilities under this Agreement to the satisfaction of the County, this Agreement may be terminated by the County prior to its scheduled termination date by giving the Contractor written notification of termination at least thirty (90) calendar days prior to the termination date. This Agreement shall also terminate upon the written agreement of the parties.

8. **Entire Agreement.** This document contains the entire Agreement between the parties with regard to the subject matter of this Agreement. All previous negotiations, statements and preliminary instruments of the parties and their respective representatives are merged into this Agreement. No Modification of this Agreement shall be valid or binding unless such modification is in writing, dated and signed by the authorized representative of each party.

9. **Governing Law.** The Agreement shall be construed under the law of the State of Michigan.

10. **Assignment.** The Agreement may not be assigned without the written consent of the other party.

11. **Dispute Resolution Procedure.** Any and all disputes between the parties concerning any alleged breach of this Agreement or arising out of or relating to the interpretation of this Agreement or the parties' performance of their respective obligations under this Agreement that are unable to be resolved through discussion and negotiation shall be resolved by arbitration, and such an arbitration procedure shall be the sole and exclusive remedy for such matters. The arbitrator shall be selected from a panel provided by and in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association, with such variations as the parties and the arbitrator unanimously accept. Any arbitration hearing shall be conducted in Alpena, Michigan. A judgment on the award rendered by the arbitrators may be entered in any court having appropriate jurisdiction to ensure compliance with the applicable law and this Agreement. The cost of arbitration, not including attorney fees, shall be paid by the losing party. It shall be in the discretion of the arbitration panel to award reasonable attorney fees to the prevailing party, to be paid if awarded by the losing party.

ALPENA COUNTY

Dated:

10/4/21

By:

Robert Adniam
Board Chairman

Dated:

10/1/21

By:

[Signature]
Contractor/NEMRDO