AB# 1240277

53387-03 46850-04

JUVENILE PAROLE REVOCATION HEARING CONTRACT

BETWEEN THE

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF CHILDREN AND FAMILY SERVICES
OFFICE OF JUVENILE SERVICES
AND

Jeff M. Wirth, ATTORNEY-AT-LAW

This contract is entered into by and between the Nebraska Department of Health and Human Services, **DIVISION OF CHILDREN AND FAMILY SERVICES - OFFICE OF JUVENILE SERVICES** (hereinafter "DHHS"), and **Jeff M. Wirth, Attorney-At-Law at 2002 Central Avenue; Kearney, NE. 68848-2084** (hereinafter "Contractor").

PURPOSE. The purpose of this contract is to retain legal services, as it relates to the Juvenile Parole Revocation Hearing process, for juvenile offenders who have been charged with violating the conditions of his or her Parole Agreement.

I. TERM AND TERMINATION

A. TERM. This contract is in effect from January 1, 2011 until December 31, 2011.

B. TERMINATION. This contract may be terminated at any time upon mutual written consent or by either party for any reason upon submission of written notice to the other party at least Thirty (30) days prior to the effective date of termination. DHHS may also terminate this contract in accord with the provisions designated "FUNDING AVAILABILITY" and "BREACH OF CONTRACT." In the event either party terminates this contract, the Contractor shall provide to DHHS all work in progress, work completed, and materials provided to it by DHHS in connection with this contract immediately.

II. CONSIDERATION

A. TOTAL PAYMENT. DHHS shall pay the Contractor a total amount not to exceed **$ 23,000.00** (twenty-three thousand dollars and zero cents) for the services specified herein.

B. PAYMENT STRUCTURE. Payment shall be structured as follows:

1. DHHS agrees to reimburse the Contractor **$80.00 per hour** for legal services and representation of juveniles at Juvenile Parole Revocation Hearings.
2. DHHS agrees to reimburse the Contractor for the actual cost of service support, necessary postage, and long-distance telephone calls involved in providing legal

counsel to the juvenile. Reimbursement will not be made for any costs associated with the use of fax machines or copy machines.

3. DHHS agrees to reimburse the Contractor for necessary travel related to the performance of this contract. The reimbursement shall follow the guidelines for reimbursement of mileage under the State of Nebraska's travel policy. The guidelines may be found at: http://www.das.state.ne.us/accounting/nis/amcon.htm.
4. The Contractor will submit a monthly billing with an itemized description of the services provided each juvenile, date of service, and the amount of time providing said service. The billing will also itemize the expenses for service support, postage, long-distance telephone calls, and travel. Payment will be made by either paper warrant or electronic means.

III. SCOPE OF SERVICES

A. The Contractor shall do the following:

1. The Contractor agrees to represent all juveniles at Juvenile Parole Revocation Hearings who have allegedly violated the conditions of their parole, unless retained legal counsel is available to the juvenile. Contracted services do not include representation of juveniles during the Preliminary Hearing process.
2. The Contractor agrees to prepare for the juvenile's Revocation Hearing.
   a) The Contractor will review each juvenile's hearing packet that is received from DHHS, the allegations, and the submitted evidence which supports these allegations.
   b) The Contractor will ensure that the juvenile has been informed of their rights during the Revocation Hearing process and has received the notice of allegations.
   c) The Contractor will consult with the juvenile prior to the Revocation Hearing.
   d) Upon receipt of the final hearing recommendation and order from the DHHS, the Contractor will send the juvenile a formal letter documenting the decision on revocation of parole and a copy of the order.
3. The following list of attorneys are identified by the Contractor as individuals who will perform or assist under subcontract in the performance of the services under this contract:

Jeff M. Wirth	P.O. Box 2084; Kearney, NE. 68848-2084 Phone: (308) 234-6561	Fax: (308) 236-5761
Aaron Bishop	P.O. Box 1414; Kearney, NE 68848-1414 Phone: (308) 234-2700	Fax: (308) 234-2849
Vikki Stamm	P.O. Box 188; Kearney, NE 68848 Phone: (308) 237-4744	Fax: (308) 237-4788
John Marsh	P.O. Box 10; Kearney, NE 68848 Phone: (308)236-6441	Fax: (308) 284-374

Brandon Brinegar P.O. Box 1685; Kearney, NE. 68848-1685
Phone: (308) 237-5187 Fax: (308) 237-5530

4. The Contractor may add or remove subcontracting attorneys by submitting written notice to DHHS Legal Services prior to their providing services. DHHS Legal Services reserves the right to reject proposed attorneys for any reason. The Contractor agrees to notify DHHS Legal Services if there are any changes in the list of attorneys, their addresses, and fax numbers. The Contractor is prohibited from delegating duties under this contract to any third-party through any other means.
5. The Contractor will ensure that any attorney identified by the Contractor to perform services under this contract will have and maintain an active license with the Nebraska Bar Association. If an attorney no longer has an active license to practice law in Nebraska, the Contractor will notify DHHS Legal Services and the attorney's name will be removed from the identified list.
6. The Contractor will coordinate with DHHS Legal Services in establishing a date and time for the Revocation Hearing.
7. The Contractor and each subcontractor shall take out and maintain during the life of this contract such Legal Malpractice Insurance and Automobile Liability Insurance as shall protect Contractor and any subcontractor performing work covered by this contract from claims for legal malpractice damages and damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

   a) Insurance coverage amounts required:
      1) Legal Malpractice Insurance
         (a) General Aggregate $1,000,000
         (b) Personal/Advertising Injury $ 750,000 any one person

      2) Automobile Liability
         (a) The Contractor shall maintain Automobile Liability Insurance at no less than the minimum amounts of coverage required by Nebraska law, found at Neb. Rev. Stat. § 60-509. The Contractor shall ensure that any automobile operated in performance of this contract is covered by insurance of a like amount.

   b) The Contractor should furnish DHHS certificates of insurance coverage complying with the above requirements. These certificates or the cover sheet shall include the name of the company, policy number, effective dates, dates of expiration and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto. Notice of cancellation of any required insurance policy must be submitted to DHHS

when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

B. DHHS shall do the following:

1. DHHS Legal Services will mail the documents pertaining to the juvenile's Revocation Hearing packet to the assigned attorney providing services by U.S Postal Service at DHHS Legal Services expense. When time is of a factor, the documents will be mailed via overnight or priority mail at DHHS Legal Services expense. The Revocation Hearing packet may be sent by facsimile, if requested by the Contractor.
2. DHHS Legal Services will be responsible in setting up the hearing via telephone conference.
3. The Revocation Hearing will be conducted by a hearing officer who is an attorney licensed to practice law in the State of Nebraska and is an employee of DHHS Legal Services. The hearing officer will not be assigned to any duties that require them to give ongoing legal advice to any person who is employed by or who is a contractor with DHHS.
4. DHHS Legal Services will be responsible for informing the Juvenile Services Officer and the Youth Rehabilitation and Treatment Center of the scheduled hearing date, time, location, hearing officer, and the assigned attorney representing the juvenile.
5. DHHS will be responsible in faxing the final hearing recommendation and order to the assigned attorney.

IV. GENERAL PROVISIONS

A. ACCESS TO RECORDS AND AUDIT RESPONSIBILITIES.

1. Except as attorney client privileged, all Contractor books, records, and documents regardless of physical form, including data maintained in computer files or on magnetic, optical or other media, relating to work performed or monies received under this contract shall be subject to audit at any reasonable time upon the provision of reasonable notice by DHHS. Contractor shall maintain all records for five (5) years from the date of final payment, except that records that fall under the provisions of the Health Insurance Portability and Accountability Act (HIPAA) shall be maintained for six (6) full years from the date of final payment. In addition to the foregoing retention periods, all records shall be maintained until all issues related to an audit, litigation or other action are resolved to the satisfaction of DHHS. All records shall be maintained in accordance with generally accepted business practices.

2. The Contractor shall provide DHHS any and all written communications received by the Contractor from an auditor related to Contractor's internal control over financial reporting requirements and communication with those charged with governance including those in compliance with or related to Statement of Auditing Standards (SAS) 112 *Communicating Internal Control related Matters Identified in an Audit* and

SAS 114 *The Auditor's Communication with Those Charged With Governance.* The Contractor agrees to provide DHHS with a copy of all such written communications immediately upon receipt or instruct any auditor it employs to deliver copies of such written communications to DHHS at the same time copies are delivered to the Contractor, in which case the Contractor agrees to verify that DHHS has received a copy.

3. The Contractor shall immediately correct any material weakness or condition reported to DHHS in the course of an audit and notify DHHS that the corrections have been made.

4. In addition to, and in no way in limitation of any obligation in this contract, the Contractor shall be liable for audit exceptions, and shall return to DHHS all payments made under this contract for which an exception has been taken or which has been disallowed because of such an exception, upon demand from DHHS.

B. AMENDMENT. This contract may be modified only by written amendment, executed by both parties. No alteration or variation of the terms and conditions of this contract shall be valid unless made in writing and signed by the parties.

C. ANTI-DISCRIMINATION. The Contractor shall comply with all applicable local, state and federal statutes and regulations regarding civil rights and equal opportunity employment, including Title VI of the Civil Rights Act of 1964; the Rehabilitation Act of 1973, Public Law 93-112; the Americans With Disabilities Act of 1990, Public Law 101-336; and the Nebraska Fair Employment Practice Act, NEB. REV. STAT. §§ 48-1101 to 48-1125. Violation of said statutes and regulations will constitute a material breach of contract. The Contractor shall insert this provision in all subcontracts.

D. ASSIGNMENT. The Contractor shall not assign or transfer any interest, rights, or duties under this contract to any person, firm, or corporation without prior written consent of DHHS. In the absence of such written consent, any assignment or attempt to assign shall constitute a breach of this contract.

E. ASSURANCE. If DHHS in good faith, has reason to believe that the Contractor does not intend to, is unable to, or has refused to perform or continues to perform all material obligations under this contract, DHHS may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at DHHS's option, be the basis for terminating this contract.

F. BREACH OF CONTRACT. DHHS may terminate the contract, in whole or in part, if the Contractor fails to perform its obligations under the contract in a timely and proper manner. DHHS may, by providing a written notice of default to the Contractor, allow the Contractor to cure a failure or breach of contract within a period of thirty (30) days or longer at DHHS's discretion considering the gravity and nature of the default. Said notice shall be delivered by Certified Mail, Return Receipt Requested or in person with

proof of delivery. Allowing the Contractor time to cure a failure or breach of contract does not waive DHHS's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. DHHS may, at its discretion, contract for any services required to complete this contract and hold the Contractor liable for any excess cost caused by Contractor's default. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.

G. CONFIDENTIALITY. Except as attorney client privileged, any and all information gathered in the performance of this contract, either independently or through DHHS, shall be held in the strictest confidence and shall be released to no one other than DHHS without the prior written authorization of DHHS, provided, that contrary contract provisions set forth herein shall be deemed to be authorized exceptions to this general confidentiality provision. This provision shall survive termination of this contract.

H. CONFLICTS OF INTEREST. In the performance of this contract, the Contractor shall avoid all conflicts of interest and all appearances of conflicts of interest. The Contractor shall immediately notify DHHS of any such instances encountered so that other arrangements can be made to complete the work.

I. DATA OWNERSHIP AND COPYRIGHT. Except as attorney client privileged, all data collected as a result of this project shall be the property of DHHS. The Contractor shall not copyright any of the copyrightable material produced in conjunction with the performance required under this contract without written consent from DHHS. DHHS hereby reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the copyrightable material for state government purposes. This provision shall survive termination of this contract.

J. DEBARMENT, SUSPENSION OR DECLARED INELIGIBLE. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

K. DOCUMENTS INCORPORATED BY REFERENCE. All references in this contract to laws, rules, regulations, guidelines, directives, and attachments which set forth standards and procedures to be followed by the Contractor in discharging its obligations under this contract shall be deemed incorporated by reference and made a part of this contract with the same force and effect as if set forth in full text, herein.

L. DRUG-FREE WORKPLACE. Contractor certifies that it maintains a drug-free workplace environment to ensure worker safety and workplace integrity. Contractor shall provide a copy of its drug-free workplace policy at any time upon request by DHHS.

M. FORCE MAJEURE. Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this contract due to a natural

disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of this contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under this contract which are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything reasonably necessary to resume performance as soon as possible. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under this contract.

N. FUNDING AVAILABILITY. DHHS may terminate the contract, in whole or in part, in the event funding is no longer available. Should funds not be appropriated, DHHS may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. DHHS shall give the Contractor written notice thirty (30) days prior to the effective date of any termination. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

O. GOVERNING LAW. The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against DHHS or the State of Nebraska regarding this contract shall be brought in Nebraska administrative or judicial forums as defined by Nebraska State law. The Contractor shall comply with all Nebraska statutory and regulatory law.

P. HOLD HARMLESS.

1. The Contractor shall defend, indemnify, hold, and save harmless the State of Nebraska and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State of Nebraska, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, subcontractors, consultants, representatives, and agents, except to the extent such Contractor liability is attenuated by any action of the State of Nebraska which directly and proximately contributed to the claims.

2. DHHS's liability is limited to the extent provided by the Nebraska Tort Claims Act, the Nebraska Contract Claims Act, the Nebraska Miscellaneous Claims Act, and any other applicable provisions of law. DHHS does not assume liability for the action of its Contractors.

Q. INDEPENDENT CONTRACTOR. The Contractor is an Independent Contractor and neither it nor any of its employees shall for any purpose be deemed employees of DHHS. The Contractor shall employ and direct such personnel as it requires to perform

its obligations under this contract, exercise full authority over its personnel, and comply with all workers' compensation, employer's liability and other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer providing services as contemplated by this contract.

R. INVOICES. Invoices for payments submitted by the Contractor shall contain sufficient detail to support payment. Any terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties.

S. INTEGRATION. This written contract represents the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this contract.

T. NEBRASKA NONRESIDENT INCOME TAX WITHHOLDING. Contractor acknowledges that Nebraska law requires DHHS to withhold Nebraska income tax if payments for personal services are made in excess of six hundred dollars ($600) to any contractor who is not domiciled in Nebraska or has not maintained a permanent place of business or residence in Nebraska for a period of at least six months. This provision applies to individuals, to a corporation if 80% or more of the voting stock of the corporation is held by the shareholders who are performing personal services, and to a partnership or limited liability company if 80% or more of the capital interest or profits interest of the partnership or limited liability company is held by the partners or members who are performing personal services.

The parties agree, when applicable, to properly complete the Nebraska Department of Revenue Nebraska Withholding Certificate for Nonresident Individuals Form W-4NA or its successor. The form is available at:
http://www.revenue.ne.gov/tax/current/f_w-4na.pdf or
http://www.revenue.ne.gov/tax/current/fill-in/f_w-4na.pdf

U. NEBRASKA TECHNOLOGY ACCESS STANDARDS.
The Contractor shall review the Nebraska Technology Access Standards, found at http://www.nitc.state.ne.us/standards/accessibility/tacfinal.html and ensure that products and/or services provided under the Contract comply with the applicable standards. In the event such standards change during the Contractor's performance, the State may create an amendment to the Contract to request that Contract comply with the changed standard at a cost mutually acceptable to the parties.

V. NEW EMPLOYEE WORK ELIGIBILITY STATUS. The Contractor shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland

Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by NEB. REV. STAT. § 4-108.

W. PROMPT PAYMENT. Payment shall be made in conjunction with the State of Nebraska Prompt Payment Act, NEB. REV. STAT. §§ 81-2401 through 81-2408. Unless otherwise provided herein, payment shall be made by electronic means.

ACH Enrollment Form Requirements for Payment
"It is the responsibility of the vendor to complete and sign the State of Nebraska ACH Enrollment Form and to obtain the necessary information and signatures from their financial institution. The completed form must be submitted before payments to the vendor can be made."
Download ACH Form:
http://www.das.state.ne.us/accounting/nis/address_book_info.htm

X. PUBLIC COUNSEL. In the event Contractor provides health and human services to individuals on behalf of DHHS under the terms of this contract, Contractor shall submit to the jurisdiction of the Public Counsel under NEB. REV. STAT. §§ 81-8,240 through 81-8,254 with respect to the provision of services under this contract. This clause shall not apply to contracts between DHHS and long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act.

Y. RESEARCH. The Contractor shall not engage in research utilizing the information obtained through the performance of this contract without the express written consent of DHHS. The term "research" shall mean the investigation, analysis, or review of information, other than aggregate statistical information, which is used for purposes unconnected with this contract.

Z. SEVERABILITY. If any term or condition of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this contract did not contain the particular provision held to be invalid.

AA. SUBCONTRACTORS. The Contractor shall not subcontract any portion of this contract without prior written consent of DHHS. The Contractor shall ensure that all subcontractors comply with all requirements of this contract and applicable federal, state, county and municipal laws, ordinances, rules and regulations.

BB. TIME IS OF THE ESSENCE. Time is of the essence in this contract. The acceptance of late performance with or without objection or reservation by DHHS shall not waive any rights of DHHS nor constitute a waiver of the requirement of timely performance of any obligations on the part of the Contractor remaining to be performed.

NOTICES. Notices shall be in writing and shall be effective upon receipt. Written notices, including all reports and other written communications required by this contract shall be sent to the following addresses:

FOR DHHS:

Peggy L. Barner
Department of Health and Human Services
P.O. Box 95026
Lincoln, NE. 68509-5026
402-471-8402

FOR CONTRACTOR:

Jeff M. Wirth, Attorney-At-Law
Buffalo County Public Defender's Office
P.O. Box 2084
Kearney, NE. 68848-2084
308-234-6561

IN WITNESS THEREOF, the parties have duly executed this contract hereto, and each party acknowledges the receipt of a duly executed copy of this contract with original signatures.

FOR DHHS:

Edward H. Matney
Administrator
Department of Health and Human Services
Division of Children and Family Services

DATE: 05 January 2011

FOR CONTRACTOR:

Jeff M. Wirth
Attorney-At- Law

DATE: December 30, 2010