

**AGREEMENT BETWEEN  
REISER & FRUSHOUR, PLLC  
AND THE CITY OF ANN ARBOR  
FOR PROFESSIONAL LEGAL SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 East Huron Street, Ann Arbor, Michigan 48104 ("City"), and Reiser & Frushour, PLLC, with its address at 122 South Main Street, Suite 260, Ann Arbor, Michigan 48104 ("Firm"), agree as follows on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

The Firm agrees to provide professional legal services to the City under the following terms and conditions:

**I. DEFINITIONS**

Administering Service Area/Unit means 15<sup>th</sup> Judicial District Court ('the District Court').

Contract Administrator means the District Court Administrator acting personally or through any assistants designated from time to time by the District Court Administrator

Project means Court-Appointed Indigent Legal Representation, RFP 904.

**II. DURATION**

This Agreement shall become effective on September 1, 2014, and shall remain in effect until June 30, 2015, unless terminated as provided for in this Agreement.

The City may renew this Agreement twice for an additional one-year term on the same terms and conditions subject to satisfactory performance by the Firm. Should the District Court and the City elect to renew the Agreement the Firm will be provided with notice of the election no less than sixty (60) days before the end of the respective term.

**III. SERVICES**

- A. The Firm agrees to provide professional legal services ("Services") to represent indigent persons when appointed by a judge or magistrate for this purpose in connection with the Project as described in Exhibit A.
- B. Quality of Services under this Agreement shall be of the level of professional quality performed by attorneys regularly rendering criminal defense representation. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Firm shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in

effect as may be applicable to the rights and obligations set forth in the Agreement.

#### **IV. COMPENSATION OF FIRM**

- A. The Firm shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Firm, and approved by the Contract Administrator.
- B. The Firm shall keep complete records of time spent on District Court appointments so that the City or District Court may independently substantiate invoices submitted by the Firm.
  - 1. The Firm shall provide to the Contract Administrator on a monthly basis a detailed accounting for time spent in the prior month on court appointed cases. The detailed accounting shall list the following minimum information: dates and hours worked, number of matters handled and number of court appointments received for the month. The detailed accounting shall be submitted no later than thirty (30) days after the last day of the prior month.
  - 2. The Firm shall provide upon request, in addition to the monthly detailed accounting, time records in summary form on a form approved by the Michigan State Court Administrative Office.
- C. Any authorized agent of the City, including the CFO or his/her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Firm, involving transactions related to the Agreement until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations.

#### **V. INSURANCE/INDEMNIFICATION**

- A. The Firm shall procure and maintain during the life of this contract, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Firm or by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Firm shall provide to the City, before the commencement of any work under this

contract, documentation demonstrating it has obtained the policies required by Exhibit C.

- B. Any insurance provider of Firm shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" "Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, the Firm shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result from any acts or omissions by the Firm or its employees and agents occurring in the performance of or breach in this Agreement.

## **VI. COMPLIANCE REQUIREMENTS**

- A. Nondiscrimination. The Firm agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (MCL 37.2209) The Firm further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.
- B. Living Wage. The Firm is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code and agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Firm agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

## **VII. WARRANTIES BY THE FIRM**

- A. The Firm warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.

- B. The Firm warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement. Further, the Firm warrants that all attorneys assigned to the performance of the Services are members in good standing of the State Bar of Michigan.
- C. The Firm warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Firm warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

## **VIII. TERMINATION OF AGREEMENT**

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to the Firm except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Notwithstanding the preceding paragraph, the City may terminate the Agreement if Firm or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to any criminal offense. Termination for the reason stated in this paragraph is effective upon receipt of notice.
- D. Firm acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Firm. The Contract Administrator shall give the Firm written notice of such non-

- appropriation within thirty (30) days after it receives notice of such non-appropriation.
- E. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

## **IX. OBLIGATIONS OF THE CITY**

- A. The City agrees to give the Firm access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Firm of any defects in the Services of which the Contract Administrator has actual notice.

## **X. ASSIGNMENT**

- A. The Firm shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, the Firm shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Firm shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

## **XI. NOTICE**

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the FIRM, it shall be addressed and sent to:

Reiser & Frushour, PLLC  
122 S. Main St., Suite 260

Ann Arbor, MI 48104  
Attn: Patricia Reiser

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor  
301 E. Huron  
Ann Arbor, Michigan 48104  
Attn: 15<sup>th</sup> District Court Administrator

## **XII. CHOICE OF LAW**

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

## **XIII. CONFLICT OF INTEREST**

The Firm certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. The Firm further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

## **XIV. SEVERABILITY OF PROVISIONS**

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

## **XV. EXTENT OF AGREEMENT**

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Firm with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Firm and the City.

### **FOR FIRM**

By \_\_\_\_\_  
Patricia Reiser

By \_\_\_\_\_  
Ann Frushour

### **FOR THE CITY OF ANN ARBOR**

By \_\_\_\_\_  
John Hieftje, Mayor

By \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

### **Approved as to substance**

\_\_\_\_\_  
Steven D. Powers, City Administrator

\_\_\_\_\_  
Sharyl L. Samborn, Court Administrator

### **Approved as to Form and Content**

\_\_\_\_\_  
Stephen K. Postema, City Attorney

\_\_\_\_\_  
Elizabeth P. Hines, Chief Judge

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### *General*

Each attorney, employee or consultant employed by the Firm in the performance of this Agreement shall devote such time, attention, skill, knowledge and professional ability as is necessary to perform most effectively and efficiently the services in accordance with the level of professional quality performed by experts regularly performing these legal services in the State of Michigan;

All Services to be provided in conformance with the terms and conditions of RFP 904.

#### *Services*

Provide full and complete representation, upon receipt of an appointment from a judge or magistrate, of indigent defendants charged with misdemeanors in the 15<sup>th</sup> Judicial District Court with potential sanctions upon conviction which may include incarceration. The Firm agrees to appear at all hearings with the client and, throughout the case, zealously represent the client in a manner consistent with the standards established by the Michigan Rules of Professional Conduct.

Provide full and complete representation, upon receipt of an appointment and assignment from a judge or magistrate, of indigent defendants in connection with all specialty courts administered by the 15<sup>th</sup> Judicial District Court.

The Firm shall fully coordinate all Services with the District Court Administrator and Chief Judge.

**EXHIBIT B**  
**FEE SCHEDULE**

This is a flat fee contract for services. The Firm will be paid Two Hundred Thousand Dollars (\$200,000.00) for the term of this agreement without regard to the number of cases assigned to the Firm (i.e. open assigned cases regardless of date of assignment) and without regard to the actual amount of time expended by the Firm per case. The Firm acknowledges and agrees to provide full and complete legal representation for all court-appointments under this Agreement for the flat-fee fee stated above and waives any right to request additional funds during the term.

Payment shall be made in ten (10) equal monthly installments of Twenty Thousand Dollars (\$20,000) each following the Firm's receipt of detailed invoices in accordance with Article IV and approved by the Contract Administrator.

No invoice submitted by Reiser and Frushour, PLLC for services under this contract will be payable if submitted later than thirty (30) days after the contract termination date.

Reiser and Frushour, PLLC shall keep complete records of time spent on Court appointments so that the City or Court may independently substantiate invoices submitted by Reiser and Frushour, PLLC. Such records shall be made available to the City or Court upon request and, upon request, shall be submitted in summary form on a form approved by the Michigan State Court Administrative Office.

## **EXHIBIT C** **INSURANCE REQUIREMENTS**

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, the Firm shall provide certificates of insurance to the City on behalf of itself, and when requested any subcontractor(s). The certificates of insurance shall meet the following minimum requirements.

- A. 1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Firm and its employees in an amount not less than \$1,000,000.
2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident  
Bodily Injury by Disease - \$500,000 each employee  
Bodily Injury by Disease - \$500,000 each policy limit
3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000	Per Job General Aggregate
\$1,000,000	Personal and Advertising Injury
4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

- B. Insurance required under A. 3 and A. 4 of this contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Firm agrees to waive any right of recovery by its insurer against the City.
- C. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Firm supplies a copy of the endorsements required on the policies. Upon request, the Firm shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Firm shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.