

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
REISER & FRUSHOUR, P.L.L.C.
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, P.L.L.C., with its address at 122 South Main Street, Suite 260, Ann Arbor, Michigan 48104 ("Firm"), agree as follows on this ____ day of _____, 2017.

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

I. DEFINITIONS

Administering Service Area/Unit means 15th 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 17-11.

II. DURATION

This Agreement shall become effective on July 1, 2017, and shall remain in effect until June 30, 2018, 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. INDEPENDENT CONTRACTOR

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

V. COMPENSATION OF CONTRACTOR

- 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.
- 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.

VI. 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 act(s) or omission(s) giving rise to the claim were made by the Firm, 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 satisfactory to the City demonstrating it has obtained the policies and endorsements required by Exhibit C.

- B. Any insurance provider of the 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, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

VII. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Firm agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Firm further agrees to comply with the provisions of Section 9:158 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. If the Firm is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, the Firm 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.

VIII. WARRANTIES BY THE FIRM

- A. The Firm warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons 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.

- 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.
- E. The Firm warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting completion as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Firm to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

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, 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. 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. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
- 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 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 Firm. The Contract Administrator shall give Firm written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- E. The provisions of Articles VI and VIII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Firm's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

XII. REMEDIES

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
- B. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise.
- C. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.

XIII. 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
Attn: Patricia Reiser
122 S. Main St., Suite 260
Ann Arbor, MI 48104

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

15th Judicial District Court
Attn: Shryl Samborn, Court Administrator
Ann Arbor Justice Center
301 E. Huron St.
Ann Arbor, Michigan 48104

XIV. CHOICE OF LAW AND FORUM

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. 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.

XV. CONFLICTS OF INTEREST OR REPRESENTATION

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.

The Firm agrees to advise the City if Firm has been or is retained to handle any matter in which its representation is adverse to the City. The City's prospective consent to the Firm's representation of a client in matters adverse to the City, as identified above, will not apply in any

instance where, as the result of the Firm's representation, the Firm has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to another client of the Firm, could be used in any such other matter by the other client to the material disadvantage of the City. Each matter will be reviewed on a case by case basis.

XVI. 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.

XVIII. 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. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Firm and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

FOR THE FIRM

By _____
Patricia Reiser

By _____
Anna Frushour

FOR THE CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to form and content

By _____
Stephen K. Postema

[signatures continued on next page]

Approved as to substance

By _____
Howard S. Lazarus, City Administrator

By _____
Joseph F. Burke, Chief Judge
15th Judicial District Court

By _____
Shryl Samborn, Court Administrator
15th Judicial District Court

**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 17-11.

Services

Provide full and complete representation, upon receipt of an appointment from a judge or magistrate, of indigent defendants charged with misdemeanors in the 15th 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 15th Judicial District Court.

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

EXHIBIT B COMPENSATION

This is a flat fee contract for services. The Firm will be paid Two Hundred Forty Nine Thousand Seven Hundred Twenty Eight Dollars and Sixty-four Cents (\$249,728.64) 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 twelve (12) equal monthly installments of Twenty Thousand Eight Hundred Ten Dollars and Seventy-two Cents (\$20,810.72) 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, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

A. The Contractor shall have insurance that meets the following minimum requirements:

1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Contractor 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. 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 above 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 Contractor agrees to waive any right of recovery by its insurer against the City.

- C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. 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. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor 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 Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.