

PROFESSIONAL SERVICES CONTRACT

This Contract for Professional Services (the "Contract") is by and between the County of Genesee, a Michigan Municipal Corporation, whose principal place of business is located at 1101 Beach Street, Flint, Michigan 48502 (the "County"), and Kevin L. Rush, sole proprietor, whose principal place of business is located at 934 Church Street, Flint, Michigan 48502 (the "Contractor") (the County and the Contractor together, the "Parties").

1. Agreement and Authority

Execution of this Agreement is authorized by Resolution #2023-601 issued by the Genesee County Board of Commissioners.

2. Term

2.1 Initial Term

The initial term of this Contract commences on October 1, 2023, and shall be effective through September 30, 2023 (the "Initial Term").

2.2 Extension Terms

The County has the option to extend this Contract for up to three (3) additional one-year terms (the "Extension Terms").

3. Scope of Work

The Contractor agrees to perform the services described on Exhibit A (the "Services").

4. Compensation

Unit Rate. The Contractor shall be paid according to the rates identified on Exhibit B. The total amount paid to the Contractor shall not exceed \$ 56,000. This amount is based upon the anticipated caseload size upon execution of this Agreement. The Contractor must provide to the County monthly invoices in a form acceptable to the County, along with any necessary supporting documentation such as time sheets. The County will pay the Contractor within sixty (60) days of the County's acceptance of the invoice and supporting documentation.

If the caseload size significantly increases throughout the course of performance of this Agreement, the Contractor shall notify the County, in writing as soon as such increase occurs. Any amounts above the maximum compensation amount listed in this section shall require an amendment to this Agreement, which requires approval by the Genesee County Board of Commissioners. If the caseload increases, it shall be the Contractor's responsibility to request an Amendment prior to exceeding the maximum amount of billable hours and costs listed in this section.

5. **Taxes.** The County is a Michigan Municipal Corporation. The Contractor acknowledges that the County is exempt from Federal Excise Tax and Michigan Sales Tax.

6. **Contract Administrator**

The contract administrator for this Contract is **Nathaniel C. Perry, III** (the "Contract Administrator"). The Contractor acknowledges that the Contract Administrator is the primary County contact for notices and instructions related to this Contract. The Contractor agrees to provide a copy of all notices related to this Contract to the Contract Administrator.

7. **Warranties**

The Contractor warrants that:

- 7.1 The Services will be performed in a good and workmanlike manner and in accordance with generally acceptable practices in the industry.
- 7.2 The Contractor will comply with all federal, state, and local laws in the performance of the Services.
- 7.3 The Contractor will comply with the requirements of any federal or state grants used to fund or support this Contract.
- 7.4 The Contractor will obtain and maintain all applicable licenses and permits necessary to provide the Services for the entire term of this Contract.
- 7.5 The Contractor will obtain and maintain all applicable licenses and permits necessary to provide the Services for the entire term of this Contract.

The Contractor agrees to indemnify, defend, and hold harmless the County, its officials, officers, agents, and employees from any and all claims, damages, or liability, including defense costs, arising out of the Contractor's breach of these warranties.

8. **Suspension of Work**

8.1 Order to Suspend Performance

Upon written order of the Contract Administrator, the Contractor agrees to immediately suspend performance of the Services. The Contractor shall not be entitled to compensation for any Services performed during any period in which the Contract Administrator has directed that the Services be suspended.

8.2 Necessary Actions Before Suspension

If immediate suspension of the Services would cause harm, injury, or damage to persons or property, the Contractor must immediately notify the Contract Administrator of the nature of such harm, injury, or damage, and obtain written authorization from the Contract Administrator to take such

necessary action as to prevent or minimize such harm, injury or damage. Actions authorized by the Contract Administrator pursuant to this paragraph are compensable.

9. Termination

9.1 Termination for Cause

If the Contractor is in breach of any provision of this Contract, and such breach continues for fourteen (14) days after written notice is issued to the Contractor by the County of the breach, the County may terminate this Contract. Such termination for cause is effective upon receipt of the notice of termination by the Contractor.

In addition to any other remedies provided by law or this Contract, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.

9.2 Immediate Termination

If the County, in its discretion, determines that the Contractor's breach of this Contract constitutes a threat to public health, safety, or welfare, the County may terminate this Contract immediately upon notice to the Contractor.

In addition to any other remedies provided by law or this Contract, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.

9.3 Termination for Convenience

If the County determines that it is in the County's best interests, the County may terminate this Contract upon thirty (30) days written notice to the Contractor.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

9.4 Termination for Lack of Funding

If this Contract is funded by public funds or a grant from a public or private entity, and the funds are not appropriated or the grant is discontinued, the County may terminate this Contract by written notice specifying the date of termination.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

10. Nondiscrimination

The Contractor covenants that it will not discriminate against an employee or applicant of employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position, and that it will require the same non-discrimination assurances from any subcontractor who may be used to carry out duties described in this contract. Contractor covenants that it will not discriminate against businesses that are owned by women, minorities or persons with disabilities in providing services covered by this Contract, and that it shall require the same assurances from subcontractors. Breach of this covenant shall be regarded as a material breach of this contract.

11. Freedom of Information Act

This Contract and all attachments, as well as any other information submitted by the Contractor to the County, are subject to disclosure under the provisions of MCL 15.231, *et seq.*, known as the "Freedom of Information Act".

12. Intellectual Property

Any intellectual property created by the Contractor in the performance of the Services shall be considered a work made for hire, and any and all rights in such intellectual property shall belong solely to the County. Upon the County's request, the Contractor agrees to execute any documents necessary to convey ownership of such intellectual property to the County.

13. Audit Rights

13.1 Certification of Accurate Information

Contractor certifies that all information provided to the County by the Contractor relating to the award or modification of this Contract, or any payment or dispute related to this Contract, is true and correct. The Contractor further certifies that its accounting system conforms to generally accepted accounting principles.

13.2 Inspection

The Contractor agrees that the County may inspect the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Contract. If this Contract is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Contract and the terms of the applicable grant.

13.3 Audit

The Contractor agrees that the County may examine the Contractor's records to ensure compliance with the terms of this Contract. If this Contract is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's records to ensure compliance with the terms of this Contract and the terms of the applicable grant.

13.4 Records Retention

The Contractor agrees to maintain any business records related to this Contract or the Contractor's performance under this Contract for a period of at least three (3) years after final payment.

14. Identity Theft Prevention

14.1 In the event that the Contractor will obtain identifying information during the performance of the Services, the Contractor must take reasonable precautions to ensure that such identifying information is protected from unauthorized disclosure and is used only for the purpose of performing the Services.

14.2 For the purposes of this Paragraph, "identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including but not limited to name, address, telephone number, social security number, date of birth, driver's license number, taxpayer identification number, or routing code.

15. Insurance Requirements and Indemnification

The Contractor agrees to obtain insurance coverage of the types and amounts required as set forth in the Insurance Checklist attached as Exhibit B and keep such insurance coverage in force throughout the life of this Contract.

15.1 Insurance Certificate and Additional Insured Coverage

The Contractor further agrees to provide certificates of insurance to the County evidencing the coverages specified in the Insurance Checklist and including the County as an additional insured. Additional insured coverage is to be by proof of blanket additional insured coverage within the general liability policy or as provided by an endorsement specifying the County as an additional insured to the policy. Contractor's agent must provide a copy of the endorsement or language from the policy with the certificate of insurance.

15.2 Indemnification

The Contractor agrees to indemnify, defend, and hold harmless the County, its officials, officers, agents, and employees from any and all claims, damages, or liability, including defense costs, arising out of the Contractor's performance of the Services or presence on the County's property or worksite.

16. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not the employees of the County.

17. General Provisions

17.1 Entire Contract

This Contract, consisting of the following documents and Exhibits, embodies the entire Contract between the Parties.

17.1.1. The Contract – This Professional Services Contract

17.1.2. Exhibit A – The Scope of Work

17.1.3. Exhibit B – The Cost Schedule

There are no promises, terms, conditions, or obligations relating to the Services other than those contained herein. In the event of a conflict between this Contract and any Exhibit, the terms of this Contract shall control.

17.2 No Assignment

The Contractor may not assign or subcontract this Contract without the express written consent of the County.

17.3 Modification

This Contract may be modified only in writing executed with the same formalities as this Contract.

17.4 Binding Effect

The provisions of this Contract shall apply to and bind the heirs, executors, administrators, and assigns all of the parties hereto.

17.5 Headings

The paragraph headings in this Contract are used only for ease of reference, and do not limit, modify, construe, and or interpret any provision of this Contract.

17.6 Governing Law and Venue

This Contract is entered into under the laws of the State of Michigan. Any litigation between the Parties arising out of this Contract must be initiated within two years of the cause of action accruing and must be brought in a court of competent jurisdiction in Genesee County, Michigan.

17.7 Subpoena Power

The Contractor acknowledges and understands that the Chairperson of the Genesee County Board of Commissioners, pursuant to MCL 46.3(5), as amended, has the power to administer oaths, issue subpoenas, and compel a person's attendance in the same manner as a court of law. The Contractor agrees to submit to this power with respect to this Contract.

17.8 Severability and Survival

In the event that any provision of this Contract is deemed by any court of competent jurisdiction to be legally ineffective, such decision shall have no effect on the remaining provisions of this Contract.

17.9 Interpretation

Each Party has had opportunity to have this Contract reviewed by legal counsel and has had equal opportunity to contribute to its contents. In the event of any dispute concerning the interpretation of this Contract, there shall be no presumption in favor of any interpretation solely because the form of this Contract was prepared by the County.

17.10 Remedies

All remedies specified in this Contract are non-exclusive. The County reserves the right to seek any and all remedies available under this Contract and applicable law in the event that the Contractor fails to abide by the terms of this Contract.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their duly authorized agents.

KEVIN L. RUSH

COUNTY OF GENESEE

By: Kevin L. Rush
Kevin L. Rush
Managing Attorney

By: Ellen Ellenburger
Ellen Ellenburger, Chairperson
Board of County Commissioners

Date: October 2, 2023

Date: 10-6-23

EXHIBIT A

Description of the Services

67th District Court Weekend Arraignment Managed Assigned Counsel Coordinator

The Weekend Arraignment Managed Assigned Counsel Coordinator (MAAC) shall be responsible for the coordination, scheduling, and oversight of legal representation for arraignments on weekends as well as other days that the court is not open to the public, such as holidays and other court closed days.

A roster of attorneys will be formed by the Weekend Arraignment MAAC in collaboration with, and subject to the approval of, the Chief Public Defender. The roster of attorneys will be required to confer with and provide representation for indigent defendants scheduled for an arraignment on a misdemeanor or felony charge.

The court establishes the schedule for arraignments and reserves the right to modify its schedule.

All weekend, holiday or other court closed day arraignments are conducted via video conferencing. Judges or magistrates preside from the McCree Building.

The weekend arraignment roster may have the option of being located in the McCree Building to consult with clients and provide arraignment representation by video conferencing or go to the jail/city lock up and be present with the client when both are connected by video conferencing to the judge or magistrate for the arraignment.

Successful contract performance will require attorneys to utilize technology so as to be able to communicate electronically between themselves, the court, and other necessary stakeholders.

BILLING AND VERIFICATION

Per Michigan Indigent Defense Commission (MIDC) Standard 8, attorneys will submit hourly billing statements to be paid at the hourly rate in the approved compliance plan. These rates are provided in Exhibit B, Cost Schedule. All weekend arraignment roster attorneys will be required to submit monthly invoices to the MAAC. The MAAC shall review and verify the accuracy of all roster attorney billing prior to forwarding to the Office of the Public Defender administration for further review and payment processing. The MAAC will also submit their own hourly billing for all administrative and legal services performed.

Note: Attorney fees to be paid to the roster attorneys are not included in this scope of work. All roster attorneys will be paid individually by the County per MIDC.

DATA COLLECTION

The MAAC is required to assist with data collection for reporting to the MIDC. This includes, but is not limited to, information on number of cases assigned to each attorney on the weekend arraignment roster.

The MAAC is further required to assist with data collection necessary for the administration of the Office of the Public Defender. This includes, but is not limited to, contact and charging information for all felony arraignments.

CONTINUING LEGAL EDUCATION/TRAINING

Twelve (12) hours of annual CLE in the area of criminal law from an approved source is required for each of the attorneys participating on the weekend arraignment roster. Genesee County will cover the full cost of registration fees to meet this requirement. The MAAC will be responsible for tracking roster attorney compliance in coordination with the Office of the Public Defender administration.

EXHIBIT B

Cost Schedule

Managed Assigned Counsel Coordinator
Weekend Arraignment
67th District Court

An invoice is to be submitted monthly for all legal and administrative services performed in the preceding month, subject to the following:

- A. Hourly Billing Rates. Time tracking should specify the type of work performed and provide sufficient detail to allow the information to be verified.

<u>Type of Work</u>	<u>Hourly Rate</u>
Weekend Arraignments	\$200
Administrative (MAAC)	\$120

- B. Reimbursement for Case-related Expenses

Per Michigan Indigent Defense Commission (MIDC) Standard 8, assigned counsel should be reimbursed for all reasonable out-of-pocket, case-related expenses. All receipts or documentation for expenses actually incurred should be submitted with monthly invoice for reimbursement.

Note that the MIDC included overhead costs in the minimum hourly rate set forth in Standard 8. Overhead includes any costs required to maintain and operate a law office, such as rent, telephone, utilities, support staff, accounting, staff wages, and professional liability insurance. These costs are not reimbursable under this contract.

Case-related expenses that qualify for reimbursement include but are not limited to demonstrative exhibits, clothing for clients, extraordinary printing/postage expenses, and advance payment made for FOIA or other records requests.¹

¹ You can find this information in MIDC Standard 8, <https://michiganidc.gov/standards/#tab-id-8>, and *Incentivizing Quality Indigent Defense Representation* (published March 2018), <https://michiganidc.gov/wp-content/uploads/2018/06/Incentivizing-Quality-Indigent-Defense-Representation.pdf>