

INDEPENDENT CONTRACTOR AGREEMENT

This AGREEMENT ("Agreement") is effective as of the 1st day of December, 2016, and is entered into by and between the Circuit Court of the 18th Judicial Circuit ("Court") and Clausen Miller PC.

RECITALS

WHEREAS, the Court desires that Contractor render certain services more fully described herein; and

WHEREAS, the Contractor has demonstrated expertise in previously providing similar services to the Court, has represented that it has the requisite knowledge, skill, experience and other resources necessary to perform such services and is desirous of providing such services for the Court.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

1. **Incorporation of Recitals:** The matters recited above are hereby incorporated into and made a part of this Agreement.
2. **Term:** This Agreement is for a term commencing December 1, 2016 and continuing through November 30, 2017 ("Term"), unless terminated sooner as provided herein.
3. **Scope of Services:** Contractor agrees to provide Labor Negotiation services related to the collective bargaining of modifications to the Agreement between the Chief Judge of the Court and AFSCME, dated December 1, 2011, and issues arising out of that Agreement in accordance with the terms and conditions of this Agreement ("Services"). The Services shall not include litigation or arbitration proceedings, if any, related to the collective bargaining referred to herein, and this Agreement shall not apply to other services which may be provided by Contractor to the Court. The Court may, from time to time, request changes in the scope of Services. Any such changes, including any increase or decrease in Contractor's fees, shall be documented by an amendment to this Agreement in accordance with State and County laws.
4. **Compensation and Payment:** Compensation for Services during the Term shall be fees of Two Hundred Twenty-Five Dollars (\$225) per hour. Said fees will be charged hourly with a maximum cap of Twenty Eight Thousand Dollars (\$28,000). Compensation shall be based on actual Services performed during the Term of this Agreement, and the Court shall not be obligated to pay for any Services not in compliance

with this Agreement. The compensation agreement stated herein shall not apply to services rendered by Contractor to the Court which are outside of the scope of this Agreement. In the event of early termination of this Agreement, the Court shall only be obligated to pay fees for Services performed up to the date of termination. In no event, shall the Court be liable for any costs incurred or Services performed after the effective date of termination as provided herein. Consultant shall submit invoices referencing this Agreement with such supporting documentation as may be requested by the Court. Payments shall be subject to 50 ILCS 505, "Local Government Prompt Payment Act," and shall be made to the firm of Clausen Miller PC.

5. **Non-Appropriation:** Expenditures not appropriated in the current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event sufficient funds are not appropriated in a subsequent fiscal year by the County of DuPage for performance under this Agreement, the Court shall notify Contractor and this Agreement shall terminate on the last day of the fiscal period for which funds were appropriated. In no event shall the Court be liable to the Contractor for any period in excess of the cost of the Services rendered up to and including the last day of the fiscal period, provided said notice is given.

6. **Events of Default and Remedies:**
 - a. Events of Default: Events of default include, but are not limited to, any of the following: (i) Any material misrepresentation by Contractor in the inducement of this Agreement or the performance of Services; (ii) Breach of any agreement, representation or warranty made by Contractor in this Agreement, or (iii) Failure of Contractor to perform in accordance with or comply with the terms and conditions of this Agreement.
 - b. Remedies. In the event Contractor defaults under this agreement and such default is not cured within fifteen (15) calendar days after written notice is given by the Court, the following actions may be taken by the Court: (i) This Agreement may be terminated immediately; and (ii) The Court may deem Contractor non-responsible for future contract awards. The remedies stated herein are not intended to be exclusive and the Court may pursue any and all other remedies available at law or equity.

7. **Standards of Performance:** Contractor agrees to devote such time, attention, skill, and knowledge as is necessary to perform Services effectively and efficiently. Contractor acknowledges and accepts a relationship of trust and confidence with the Court and agrees to

cooperate with the Court in performing Services to further the best interests of the Court.

8. **Assignment:** This agreement shall be binding on the parties and their respective successors and assigns, provided however, that neither party may assign this Agreement or any obligations imposed hereunder without the prior written consent of the other party.

9. **Confidentiality and Ownership of Documents:**

9.1 **Confidential Information:** In the performance of Services, Contractor may have access to certain information that is not generally known to others ("Confidential Information"). Contractor agrees not to use or disclose to any third party, except in the performance of the Services, any Confidential Information or any records, reports, or documents prepared or generated as a result of this Agreement without the prior written consent of the Court. Contractor shall not issue publicity news releases or grant press interviews, except as may be required by law, during or after the performance of the Services, nor shall Contractor disseminate any information regarding Services without the prior written consent of the Court. Contractor agrees to cause its personnel, staff, and/or subcontractors, if any, to undertake the same obligations of confidentiality agreed to by the Contractor under this Agreement. The terms of this Paragraph 9.1 shall survive the expiration or termination of the Agreement.

9.2 **Ownership:** All records, reports, documents, and other materials prepared by the Contractor in the performing Services, as well as all records, reports, documents, and other materials containing Confidential Information prepared or generated as a result of this Agreement, shall at all times be and remain the property of the Court. All of the foregoing items shall be delivered to the Court upon demand at any time and in any event, shall be promptly delivered to the Court upon expiration or termination of this Agreement. In the event any of the above items are lost or damaged while in Contractor's possession, such items shall be restored or replaced at Contractor's expense.

10. **Representation and Warranties of Contractor:** Contractor represents and warrants that the following shall be true and correct as of the effective date of this Agreement and shall continue to be true and correct during the Term of this Agreement.

- 10.1 Licensed Professionals: Services required to be performed by professionals shall be performed by professionals licensed to practice by the State of Illinois in the applicable professional discipline.
- 10.2 Compliance with Laws: Contractor is and shall remain in the compliance with all local, state, and federal laws, County of DuPage ordinances, and regulations relating to this Agreement and the performance of Services. Further, Contractor is and shall remain in the compliance with all Court policies, and rules, including, but not limited to, criminal background checks.
- 10.3 Good Standing: Contractor is not in default and has not been deemed by the Court to be in default under any other Agreement with the Court during the five (5) year period immediately preceding the effective date of this Agreement.
- 10.4 Authorization: In the event Contractor is an entity other than the sole proprietorship, Contractor represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of the Contractor is duly authorized by Contractor and has been made with complete and full authority to commit Contractor to all terms and conditions of this Agreement which shall constitute valid, binding obligation of the Contractor.
- 10.5 Gratuities: No payment, gratuity, or offer of employment, exception as permitted by the Illinois State Gift Ban Act, was made by or to Contractor in relation to this Agreement or as an inducement for award of this Agreement.
11. Independent Contractor: It is understood and agreed that the relationship of Contractor to the Court is and shall continue to be that of an independent contractor and neither Contractor nor any of Contractor's employees shall be entitled to receive Court employee benefits. As an independent contractor, Contractor agrees to be responsible for the payment of all taxes and withholdings specified by law, which may be due in regard to compensation paid by the Court. Contractor agrees that neither Contractor nor its employees, staff or subcontractors shall represent themselves as employees or agents of the Court. Contractor hereby represents that Contractor's valid taxpayer identification number as defined by the United States Internal Revenue Code (social security number or federal employer identification number) 36-2921056.

12. **Indemnification:** Contractor agrees to indemnify and hold harmless the Court, it's members, trustees, employees, agents, officers, and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages, and expenses of every kind, nature and character, including costs and attorney fees, arising out of, or related to any and all claims, liens, damages, obligations, actions, suits, judgments, settlements, or causes of action of every kind, nature and character against Contractor, in connection with or arising out of the acts or omissions of Contractor or it's employees or it's subcontractors in performing the Services under this Agreement. Notwithstanding the foregoing, the Contractor and Court shall not be deemed to have waived any right, protections, or immunities under 745 ILCS 10/1-101, et.seq. (Local Government and Governmental Employees Tort Immunity Act).
13. **Favored Nation:** Contractor shall furnish Services to the Court at the lowest price that the Contractor charges to other similarly situated parties. If Contractor overcharges, in addition to all other remedies, the Court is entitled to refund in the amount of the overcharge, plus interest at the rate of 1% per month from the date the overcharge was paid by the Court until the date refund is made. The Court has the right to offset any overcharge against any amounts due to Contractor under this or any other Agreement between Contractor and the Court, and at the Court's sole option the right to declare Contractor in default under this Agreement.
14. **Insurance:**
- 14.1 **Automobile Insurance:** If Contractor will be driving a vehicle in the course of performing the Services, Contractor shall attach a copy of its current automobile insurance card confirming that the vehicle is covered by insurance.
- 14.2 **Waiver:** In consideration of the County agreeing to waive it's requirement that Contractor carry Commercial General Liability Insurance, Professional Liability Insurance and Worker's Compensation and Employer's Liability Insurance, Contractor agrees to hold the County, it's members, trustees, employees, agents, officers, and official, harmless and from all liability in any claim or action made by Contractor or any third party, and harmless from any judgment awarded by any court or administrative body, for personal injury, disability or death, or damage or destruction of property resulting from or connected with the Services, unless caused by the gross negligence of the County.

15. **Notices:** All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally; (ii) sent by confirmed telex or facsimile (followed by the actual document); or (iii) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt.

IF TO THE COURT:

Chief Judge
Circuit Court of the 18th Judicial Circuit
505 North County Farm Road Room 2015
Wheaton, IL 60187
Attn: John Lapinski, Court Administrator

IF TO THE CONTRACTOR:

Clausen Miller PC
10 South LaSalle
Chicago, IL 60603

16. **Entire Agreement and Amendment:** This Agreement, including all exhibits and referenced documents, constitutes the entire agreement of the parties with respect to the matters contained herein. The parties acknowledge that this Agreement does not govern all services which may be furnished to the Court by Contractor. All attached exhibits are incorporated into and made a part of the agreement. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representation, either written or oral, relating to the subject matter of this Agreement is of no force or effect.
17. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to any conflict of law or choice of law principles.
18. **Waiver:** No delay or omission by the Court to exercise any right hereunder shall be construed as a waiver of any such right and the Court reserves the right to exercise any such right from time to time as often and as may be deemed expedient.
19. **County Approval:** If applicable, this Agreement is subject to appropriate committee(s) and County Board of the County of Dupage.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

By: _____
KATHRYN E. CRESWELL
CHIEF JUDGE
CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT

By: _____
CLAUSEN MILLER PC