

**The Wayne County Employees' Retirement System  
Request for Proposals  
For  
Special Legal Counsel**

**Issue Date:** April 28, 2017

**Proposal Deadline:** May 26, 2017 at 4:00 P.M. EST

**Contact:** **Robert J. Grden, Executive  
Director Phone: 313.224.2822  
Email: [rgrden@waynecounty.com](mailto:rgrden@waynecounty.com)**

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Officer Phone: 313.224.2816  
Email: [ahussein@waynecounty.com](mailto:ahussein@waynecounty.com)**

**Description:** The Wayne County Employees' Retirement System is requesting proposals from qualified law firms to serve as Special Legal Counsel to the Retirement Commission.

A copy of this Request for Proposal can be obtained from the Michigan Inter-governmental Trade Network (MITN) website, <http://www.mitn.info>, and our website, [www.wcers.org](http://www.wcers.org).

Quiet Period: All communications, any modifications, clarifications, amendments, questions, responses, or any other matters related to this RFP must be made only through the WCERS Contact listed above. No contact regarding this document with other Wayne County Employees' Retirement System employee or Retirement Commission Member is permitted, and shall be grounds for disqualification.

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### **Attachments:**

- A. Proposal Form**
- B. Standard Form of Contract**

## **I. OVERVIEW**

The Commissioners of the Wayne County Employees' Retirement System ("Retirement Commission") invites attorneys with a minimum of 10 years of experience representing public retirement systems on matters including general legal assistance on Retirement System matters, investment transactions and compliance, Internal Revenue Code compliance, and civil litigation to submit proposals to provide outside general counsel services on an as-needed basis. The assistance of outside counsel will be needed to handle matters that are not assigned to the Retirement System's in-house legal advisor, Wayne County Corporation Counsel, because of situational conflict of interest concerns or constraints arising from workload demands.

This solicitation is for a 3 year professional services contract, with an option to renew the 4th and 5th year. The firm selected shall serve at the pleasure of the Retirement Commission.

## **II. PLAN INFORMATION**

The Wayne County Employees' Retirement System (WCERS) is a public employee pension plan and trust which provides retirement, disability and survivor benefits for eligible Wayne County employees, retirees, and their beneficiaries. The WCERS was created under the authority of Act No. 156 of the Public Acts of 1851, as amended, by Act 249 of the Public Acts of 1943, commonly known as the County Pension Plan Act. MCL 46.12a, MSA 5.331(1), as amended, and continued under Article VI of the Wayne County Charter. Pursuant to Chapter 141 of the Wayne County Code of Ordinances, Retirement, as amended, the WCERS administers retirement, disability, death, and survivor benefits for Wayne County employees and retirees under the direction of the Retirement Commission .

The WCERS has assets exceeding one billion dollars, is a qualified plan under IRS regulations, and has 3,817 active members and 5,600 retirees/beneficiaries. We support Defined Benefit, Defined Contribution, Deferred Compensation and 3121 FICA Alternative Plans. For more information you can visit our website, [www.wcers.org](http://www.wcers.org).

## **III. SUBMISSION REQUIREMENTS**

The Request for Proposals must be included in the submission with the following information organized as follows:

- Title Page that includes the RFP subject, the date, the name of your firm, address, telephone number and fax number.
- Table of Contents.
- Tab 1 – A letter designating the member(s) of the firm that will have responsibility for performing the services discussed in this RFP
- Tab 2 – Submission Letter committing to the Scope of Services with exceptions fully explained

- Tab 3 – Answers to the Questionnaire Section
- Tab 4 – Firm Information
- Tab 5 – Documentation demonstrating that the firm has the ability to represent clients in Michigan and federal courts
- Tab 6 – Information addressing potential conflicts of interest which may arise on account of representation of WCERS or the Retirement Commission
- Tab 7 – Fees
- Tab 8 – Firm Insurance
- Tab 9-The firm must state any and all objections to the Standard Form of Contract
- Tab 10 – Proposal Form

Failure to submit a proposal in this format may result in the proposal not being accepted.

The Retirement Commission requests that a total number of ten (10) complete sets of your proposal be submitted. In addition, provide one (1) copy of your submission on a CD-ROM or thumb drive.

Proposals must be presented to the Retirement Commission in a sealed envelope clearly marked as follows:

RFP: Legal Services  
Wayne County Employees' Retirement System  
28 W. Adams, Suite 1900  
Attn: Robert J. Grden

Your response to this RFP must be received at the above address by **4:00 p.m.** on **Friday, May 26, 2017**. Sealed proposals must be in the actual possession of the WCERS on or prior to the date and time indicated above. The WCERS timestamp shall be the official time. Late proposals shall not be accepted. **NO EXCEPTIONS.**

#### **IV. MINIMUM QUALIFICATIONS**

The Retirement Commission requires that all prospective service providers:

1. Respondent must have a minimum of 10 years of experience representing Michigan public employee retirement system clients.
2. The Respondent must be licensed by the State of Michigan and in good standing.

#### **V. SCOPE OF SERVICES**

The Retirement Commissioners are seeking a law firm that has the ability to provide the services related to the following areas:

## 1. **General Legal Assistance**

- Attend meetings of the Retirement Commission and Committees as requested. There are 12 monthly and 4 quarterly meetings of the Retirement Commission in addition to Committee meetings.
- Provide written legal opinions as requested;
- Draft, clarify, and revise resolutions for the Retirement Commission;
- Present formal legal reports at meetings;
- Draft, review and provide recommendations on policies, procedures, and forms;
- Provide meeting and administrative support as requested;
- Organize and conduct seminars for Retirement Commission members and staff ;
- Assist staff with issues related to Domestic Relations Orders, Eligible Domestic Relations Orders, and Qualified Domestic Relations Orders;
- Assist staff on issues related to Freedom of Information requests;
- Provide legal guidance during administrative review hearings.

## 2. **Internal Revenue Compliance**

- Report on qualified plan compliance and amendments;
- Advise the Retirement Commission and staff on reporting requirements.

## 3. **Investment Compliance/Coordination Services**

- Review and provide legal support for investment objectives, policies, and guidelines;
- Review investment management agreements;
- Review investment consultant agreements;
- Report on investment compliance with State and Federal laws and regulations;
- Assist in drafting Requests for Proposals;
- Provide legal advice and support concerning real estate modification, workouts, and foreclosures;
- Provide advice and recommendation concerning loans, partnership, acquisitions, dispositions, plus commercial loans and investments.

## 4. **Litigation Services**

- Represent the Retirement Commission in civil litigation in Federal and State trial courts;
- Represent the Retirement Commission in civil appeals in Federal, State and administrative hearings;
- Represent the Retirement Commission in arbitration and mediation hearings;
- Represent the Retirement Commission in federal bankruptcy litigation.

## 5. **Other Services**

- Upon mutual consent, any other task requested by the Retirement Commission.

If you are unable to provide any of the above services please respond with how you would handle these types of requests from the Retirement Commission. Failure to respond to the scope of service items above may be considered nonresponsive and the firm submitting the RFP may be disqualified. Please acknowledge below that you can meet the above Scope of Services.

## **VI. QUESTIONNAIRE**

### **1. Organization Background**

- A. How long has your firm been in existence?
- B. Has your firm provided legal representation to Wayne County? And if so, please specifically identify all such matters. How many municipal retirement systems in Michigan do you represent
- C. How many retirement system clients has your organization lost within the past three years? Locally? What were the circumstances?
- D. Please identify and provide contact information for the person(s) we should contact with any questions about your responses to this RFP.
- E. Which attorney would have primary responsibility for the WCERS account? Please describe this person's background. Who is the backup attorney for this person?
- F. If your firm has multiple offices, which office will have primary responsibility for the WCERS account?
- G. What significant organizational changes have occurred in your firm within the last twelve months?

### **2. System Backup and Disaster Recovery**

- A. How do you maintain your client files, and what is your policy protocol on providing client access to their file? Please specify whether you have an electronic database for such files.

### **3. Services**

- A. Please explain the security procedures in place to ensure the integrity of sensitive or confidential information.
- B. Provide examples demonstrating your firm's legal expertise, including counseling and litigation, in the following areas:
  - a. MCL 46.12a, the "County Pension Statute."
  - b. MCL 38.1132 *et seq.*, "Public Employee Retirement System Investment Act."
  - c. MCL 38.1102 *et seq.*, the "Reciprocal Retirement Act."
  - d. Michigan Freedom of Information Act, MCL 15.231 *et seq.*
  - e. Michigan Open Meetings Act, MCL 15.261 *et seq.*
  - f. Wayne County Retirement Ordinance
  - g. Wayne County Charter

C. Describe your firm's experience in performing compliance reviews of Eligible Domestic Relations Orders (EDRO's) and Domestic Relations Orders (DRO's)

D. Describe any training, educational materials, or seminars that your firm could provide to enable the Retirement Commission to appropriately and effectively administer the Retirement System.

E. Detail the assistance your firm would provide in responding to Freedom of Information Act requests.

F. Describe the support your firm would provide in the event of litigation in which the Retirement System is a party.

G. Do you have any experience with Deferred Retirement Option Plans? Why?

H. Professional Describe any communications/policies your firm has drafted on behalf of a Retirement System.

I. Describe your firm's experience with compliance with the rules and regulations of the Internal Revenue Service. (Defined Benefit, Defined Contribution, Deferred Compensation, IRC 415 and 3121 FICA Alternative Plans)

J. Describe your firm's experience assisting a Retirement System in the selection of investment consultants, custodian of assets, actuaries, and other service providers.

K. Describe your firm's experience with collective bargaining organizations and agreements.

L. Describe how your firm handles conflict(s) of interest

#### **4. Administrative Support**

A. Provide the names, titles, and credentials of the individuals who would be assigned to the Retirement System's account. What are their specific responsibilities? Provide the names of other clients that they serve.

B. Will a representative of your firm be available to meet with the Retirement Commission at its request?

C. Describe how you monitor the performance of the people who would be assigned to work on our account.

D. What is the average turnover of your staff?

E. Please describe how members of your firm enhance their legal knowledge.

## **5. Risk Management**

- A. Describe the various types of insurance and indemnification provided to protect clients of service(s) proposed, including (Be sure to include specific dollar overages):
1. Professional Liability Coverage
  2. Other Coverages
  3. Carriers
  4. Coverage Limits
  5. Deductibles

## **6. Management Commitment**

- A. Describe your firm's commitment to service quality and customer service.
- B. Outline your organization's commitment to servicing the public sector market. What capital investments have you made in the last three years in this regard? What capital investments have you budgeted for the current and following year?
- C. How are issues and concerns communicated to and from clients?
- D. Describe methods you use to monitor client satisfaction.

## **7. Proposed Fees (3 year contract with the option to renew the 4<sup>th</sup> and 5<sup>th</sup> year)**

- A. Please provide a comprehensive schedule of fees for legal counsel services
- B. What costs are involved in implementing your program?
- C. Do you charge secretarial or clerical time to clients? If so, what are the rates?
- D. Do you charge for incidental fees such as copies, postage, telephone toll charges, and travel costs?
- E. How are fees for additional work outside the scope of the retainer agreement determined?
- F. How do you determine fee increases? What has been the average fee increase in your organization's fees over the past three years? What would cause any of your fee quotes to change significantly?

## **8. References**

- A. Please provide the system names, individual contact names, and phone numbers of clients that are of similar size as the Retirement System, who will share with the Retirement Commission their first-hand experiences regarding your services (preferably public Retirement Systems).

## **9. Miscellaneous**

- A. Is your firm a member of MAPERS and/or NCPERS? What other affiliations does your organization maintain to keep abreast of unique issues and developments affecting public employee Retirement Systems?



- B. Has your firm been investigated by any State or Federal regulatory or law enforcement agency in the last ten years? If yes, please describe in detail the substance and results of each such investigation.
- C. Has your firm been a party defendant to any lawsuit, including suits involving misfeasance or professional malfeasance or negligence, within the last ten years? If so, please describe the substance and results of each suit.
- D. Please describe the transition process when taking on a new client previously serviced by another law firm.

## **VII. ADDITIONAL INFORMATION**

1. The contract term is: 3 years with an option to renew the 4<sup>th</sup> and 5<sup>th</sup> year
2. Pre-Qualification: Inviting a proposal does not assume a "pre-qualification" of any proposer.
3. Proposal Preparation Cost: The Retirement Commission will not be liable for any costs incurred in preparation of proposals.
4. Certification as to "Request for Proposal" content: By submitting a proposal, the proposer certifies that he or she has fully read and understands the "Request for Proposal" and has full knowledge of the scope, nature, quantity, and quality of work to be performed. Unless specified to the contrary, submitting a proposal will be interpreted as agreement to all provisions in and requirements of the RFP.
5. Additional Information and Instruction: The proposer shall furnish such additional information the Retirement Commission may reasonably require. The Retirement Commission reserves the right to investigate the qualifications of all proposers as it deems appropriate.
6. Negotiations: All Responses must be firm for at least 120 days from the due date of the Response. If, for any reason, a contract is not executed with the selected Respondent within 14 days after notice of recommended award, then the Retirement Commission may recommend the next most responsive and responsible Respondent. There is no contract until the Retirement Commission's policies have been fulfilled.
7. Clarifications, modifications, or amendments to any response that has been submitted, but prior to the Response Deadline Date, may be made only within the discretion and written approval of the Executive Director.
8. Proposal Rejection: The Retirement Commission reserves the exclusive right to reject any or all proposals, the right in its sole discretion to accept the proposal which it considers most favorable to the Retirement Commission's interests, and the right to waive minor irregularities in the procedures. The Retirement Commission further reserves the right to seek new proposals when such a procedure is in its best interest.

9. Proposals Binding for 120 Days: All proposals submitted shall be binding for one hundred twenty (120) calendar days following the above due date for receipt of proposals to allow for evaluation and potential award of contract.

10. Completeness: All information required by the Request for Proposal shall be supplied to constitute an acceptable proposal. Failure to submit a complete proposal may result in the disqualification of your proposal.

11. Contract Award: The Proponent to whom the award is made will be notified at the earliest possible date. Tentative acceptance of the proposal, intent to recommend award of a contract and actual award of the contract will be provided by written notice sent the Proponent at the address designated in the proposal. If, for any reason, a contract is not executed with the selected Proponent within thirty (30) days after notice of recommended award, then the Retirement Commission may recommend the next most responsive and responsible Proponent. Award of this proposal is contingent upon the availability of funds for this service, within the sole discretion of the Retirement Commission.

12. Disqualification of Respondent: Any one or more of the following causes may be considered sufficient for the disqualification of a Respondent and the rejection of the response:

- a. Evidence of collusion among Respondents.
- b. Lack of competency as revealed by writher financial, experience, or equipment statements.
- c. Lack of responsibility as shown by past work.
- d. Uncompleted work under other contracts which, in the judgment of the County might hinder or prevent the prompt completion of additional work if awarded.

13. Disclosure of Contents: All information provided in the Response shall be held in confidence and shall not be revealed or discussed with competitors , until after award of the contract except as provided by law or court decision. All material submitted with the Response becomes the property of the Retirement System and may be returned only at the Commission's option.

Respondents must make no other distribution of their Responses other than authorized by this RFP. A Respondent who shares cost information contained in its Response with other Retirement System members or competing Respondent members shall be subject to disqualification.

Respondents shall not be provided any information about other Responses or prices or where the Respondent stands in relation to others at any time during the evaluation process. Any request for such information by a Respondent, its subcontractor or an affiliated party may be viewed as a compromise to the evaluation process and the requesting Respondent may be eliminated from further consideration.

The Retirement Commission appreciates the time and effort you will have expended in responding to this RFP. Thank you for your anticipated submission

**ATTACHMENT A  
PROPOSAL FORM**

Failure to complete this form shall result in your Proposal being deemed non-responsive and rejected without further evaluation.

TO: WAYNE COUNTY EMPLOYEES' RETIREMENT  
COMMISSION

The Undersigned hereby offers and, if the contract is executed by the Retirement Commission, agrees to provide the services in compliance with all terms in the RFP. The Undersigned further agrees to accept, via email or other electronic means, any and all notifications and contractual documents including, but not limited to insurance verification requests.

**OBLIGATION:**

The undersigned, by submission of this Offer, agrees to be obligated if recommended for award of the contract and if the contract is executed by the Retirement Commission to provide the services for the term as stated in the RFP.

**COMPLIANCE:**

The undersigned hereby accepts all administrative requirements of the RFP and will be in compliance with such requirements. By submitting this Proposal Form, the Proposer represents that: 1) the Proposer is in compliance with any applicable ethics regulations, and 2) if awarded a contract to provide the services required in the RFP, the Proposer will comply with the ethics provisions of the Retirement System and MI State and Federal law.

**NONCOLLUSION:**

The undersigned, by submission of this Proposal Form, hereby declares that this Proposal is made without collusion with any other provider making any other Proposal, or which otherwise would make a Proposal.

**SUBMITTAL  
REQUIREMENTS:**

The undersigned certifies it has attached a complete response to each of the submittal requirements listed in the RFP.

No proposal shall be accepted which has not been manually signed in ink in the appropriate space below:

**I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder:**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City          State          Zip

Phone: \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Authorized to Sign

Fax: \_\_\_\_\_

\_\_\_\_\_  
Print name, Title

Email: \_\_\_\_\_

Federal Tax ID: \_\_\_\_\_

Notary:

Acknowledged before me by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of  
\_\_\_\_\_ (company) this \_\_\_\_\_ (day) of \_\_\_\_\_, 2017.

Notary Signature: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Affix Seal

**ATTACHMENT B**  
**WAYNE COUNTY EMPLOYEES' RETIREMENT SYSTEM**  
**LEGAL SERVICES AGREEMENT**

**THIS AGREEMENT** is between the Wayne County Employees' Retirement System ("WCERS"), and \_\_\_\_\_, a Michigan Corporation ("Firm").

**WITNESSETH:**

**WHEREAS**, the WCERS finds it necessary to secure assistance in providing **legal services (the "Services")**; and

**WHEREAS**, the WCERS desires the Firm to render the Services; and

**WHEREAS**, the Firm represents that it is qualified and ready and willing to perform the Services;

**NOW, THEREFORE**, it is agreed:

**ARTICLE 1**  
**TERM OF AGREEMENT AND SCOPE OF SERVICE**

- 1.1 This Agreement shall have a term of (3) years from \_\_\_\_\_ to \_\_\_\_\_. The parties may renew the Agreement for (2) additional years.
- 1.2 The Firm shall provide the Services stated in Exhibit A, Scope of Service
- 1.3 The Contractor shall not commence performance under this Contract or accept payment for services provided under this Contract until the contract is approved by the WCERS Retirement Commission, per the Retirement Commission Authorized Signer Resolution.

**ARTICLE 2**  
**COMPENSATION**

- 2.1 The WCERS agrees to pay the Firm at the rates in Exhibit B, Compensation, attached. The compensation includes all remuneration to which the Firm may be entitled. The WCERS will not pay the Firm for overtime, holiday or other premium charges or other benefits.
- 2.2 The WCERS will pay for the proper performance of the Services, commensurate with the progress of the work as evidenced by the timely performance of the Services, and after it receives an invoice for payment. The invoice must certify the total cost of the Services rendered to the project to date and the cost of all Services for that billing period; and must describe the Services rendered. If the invoice also requests reimbursement or payment for reimbursable expenses, the appropriate receipts must be attached. The invoice shall be submitted monthly.
- 2.3 The Firm must direct invoices by email to Deputy Director, Gerard Grysko.
- 2.4 No payment shall be made until this Agreement has been approved under the provisions of the WCERS's policies and procedures.

**ARTICLE 3**  
**REPRESENTATIONS**

**3.1 Qualifications** The Firm, by signing this Agreement, attests that it is qualified to perform the Services to be furnished.

**3.2 Notifications** The Firm shall inform the WCERS as soon as the following types of conditions become known:

- A. Favorable developments or events which enable meeting time schedules and/or goals sooner than anticipated.
- B. Delays or adverse conditions which materially prevent, or may materially prevent, the meeting of the objectives of the Services provided. This disclosure shall be accompanied by a statement of any remedial action taken or contemplated by the Firm.

**3.3 Conflict of Interest** The Firm covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of the Services under this Agreement. The Firm further covenants that, in the performance of this Agreement, no person having any such interest shall be employed.

**3.4 Services to be Confidential** All Services, including reports, estimates, and information to be furnished are confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the WCERS except by testimony under oath in judicial proceedings or as otherwise required by law. The Firm shall take all necessary steps to ensure that no member of its staff or organization divulges any information concerning such Services.

**3.5 Facilities and Personnel**

To induce the WCERS to enter into the Agreement, the Firm represents and warrants that the Firm is authorized to do business under the laws of the State of Michigan and is duly qualified to perform the services as set forth in the Contract. The execution of this Agreement is within the Firm's authorized powers, and is not in contravention of federal, state, or local law.

The Firm warrants that all employees of the Firm assigned to the performance of the services are qualified and authorized to perform the services under the state and local laws and governing professional association rules where the employee is employed.

Whenever an employee assigned to this Agreement must be replaced for any reason, the Firm must supply an acceptable replacement as soon as possible and agrees not to substitute a lower classified employee to perform the services without obtaining prior WCERS approval in writing.

**ARTICLE 4**  
**ASSIGNMENT & SUBCONTRACTING**

- 4.1 The Firm shall not assign this Agreement, or any part of it, employ attorneys from other firms, or subcontract any of the work or Services to be performed without the WCERS's prior written approval. Such approval shall not constitute privity between the WCERS and the subcontractor.
- 4.2 Approval given in any one instance shall not relieve the Firm of its obligation to obtain the prior written consent of the WCERS to any further assignment or subcontracting.

**ARTICLE 5**  
**INDEMNIFICATION**

- 5.1 The relationship of the Firm to the WCERS is that of an independent contractor. No liability or benefits, such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or either party's agent, subcontractor or employee as a result of the performance of this Agreement. No relationship, other than that of independent contractor, shall be implied between the parties, or either party's agent, employee, or subcontractor. The Firm agrees to hold the WCERS harmless from any liabilities alleged to arise from such relationship.
- 5.2 The Firm agrees to save harmless the WCERS, its officers, employees and agents against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against the WCERS by reason of any of the following:
- A. Any negligent or tortuous act or omission held by a court of competent jurisdiction to be attributable, in whole or in part to the Firm, or any of its employees, consultants, subcontractors, assigns, agents, or any entities associated, affiliated, or subsidiary to the Firm now existing, or hereafter created, their agents and employees for whose acts any of them might be liable.
  - B. Any failure by the Firm, or the parties specified in (A), to perform its obligations either expressed or implied by this Agreement.

The Firm agrees that it has the responsibility to safeguard the property and materials that the Firm's employees or its associates use in performing this Agreement.

**ARTICLE 6**  
**INSURANCE**

- 6.1 See Attached as Exhibit C.



**ARTICLE 7**  
**AGREEMENT CHANGES**

- 7.1** Definitions: Change Order: A written order signed and issued by the Executive Director and also by any other officer authorized to sign and issue the original Agreement, directing the Firm to make changes which this Agreement authorizes the WCERS to order without consent of the Firm. Contract Modification: Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of the Agreement accomplished by mutual action of the parties to the Agreement.
- 7.2** The WCERS may request changes to the scope of Services to be furnished or performed by the Firm under the Agreement, as well as changes in the time of performance of the Agreement. All such changes shall be authorized by either Change Order or Contract Modification, as those terms are defined in this Agreement.
- 7.3** If any such change request increases or decreases the Firm's cost of, or the time required for, performance of any part of the Services under this Agreement, an adjustment may be made and the Agreement modified in writing accordingly.
- 7.4** Firm shall provide WCERS with a written proposal to WCERS's change request within five (5) business days of receipt of any such request. Firm's proposal shall describe in reasonable detail the basis for any proposed price or time adjustment. All cost estimates shall include all completed Services, and cover all costs, expenses, overhead and profit of subcontractors, if any.
- 7.5** Firm acknowledges that any change in the Agreement price represents full compensation for all costs associated with the change request, including delay costs, impacts, acceleration, disruption, consequential damages and any other cost of any nature.
- 7.6** If the WCERS does not accept the Firm's proposal, the WCERS may:
- (a) withdraw its change request;
  - (b) modify its change request, in which case the procedures set forth above will apply to the modified change request; or
  - (c) issue a Change Order.
- 7.7** Any adjustment in the Agreement price shall be computed in accordance with the provisions of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the Firm from proceeding with the Agreement as changed, provided the WCERS promptly and duly makes provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the required Services under protest, the Firm shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.
- 7.8** No action, conduct, omission, prior failure or course of dealing by the WCERS shall act to waive, modify, change or alter the requirement that Contract Modifications must be in writing and signed by the WCERS and the Firm. Firm further acknowledges that Change Orders and Contract Modifications are the exclusive method for effecting any change to the Agreement.

**ARTICLE 8**  
**PRICING ADJUSTMENTS**

- 8.1 Any adjustment in the Agreement price as a result of the WCERS's exercise of its rights under this Agreement shall be made in one or more of the following ways:
- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (b) by unit prices, if applicable, specified in the Agreement or subsequently agreed upon;
  - (c) by the costs attributable to the event or situation, plus appropriate profit or fee, if applicable, all as specified in the Agreement or subsequently agreed upon;
  - (d) in such other manner as the parties may mutually agree; or
  - (e) in the absence of agreement between the parties, by a unilateral determination of the WCERS of the costs attributable to the event or situation, with adjustment of profit or fee, as computed by the WCERS in accordance with generally accepted accounting principles.

**ARTICLE 9**  
**TERMINATION**

- 9.1 **Firm Right to Terminate** This Agreement may be terminated by the Firm upon thirty (30) days written notice. Upon delivery of such notice, the Firm shall continue all work and Services until otherwise directed by the WCERS. The WCERS will pay the Firm for the Services rendered prior to termination. The parties expressly agree that no payments under this section shall exceed the amount payable under Article 2.
- 9.2 **WCERS Right to Terminate** The WCERS may terminate this Agreement upon fifteen (15) days written notice by issuing a Notice of Termination to the Firm. The Firm acknowledges the right of the WCERS Commission by a vote as authorized in its Rules of Procedure , to terminate the Agreement for (a) an egregious breach of the terms and conditions hereof or (b) a violation of State or Federal Law.

Upon receipt of a Notice of Termination and, except as otherwise directed by the WCERS, the Firm shall:

- A. Stop work under the Agreement on the date and to the extent specified in the Notice of Termination.
- B. Obligate no additional Agreement funds for any costs beyond such date as the WCERS shall specify.
- C. On the date termination is effective, submit to the WCERS all records, reports, documents and pleadings as the WCERS shall specify; all pertinent keys to files; and carry out such directives as the WCERS may issue concerning the safeguarding or disposition of files and property.

D. Submit within thirty (30) days a final activity report and invoice.

Upon termination of this Agreement, all finished or unfinished original (or copies when originals are unavailable) documents, data, studies, briefs, drawings, maps, models, photographs, files, intermediate materials, supplies, notes, reports, or other materials (herein collectively called the "Work Product") prepared by the Firm under this Agreement, shall at the option of the WCERS, become its exclusive property, free from any claims on the part of the Firm except as herein specifically provided. The Work Product shall promptly be delivered to the WCERS upon the WCERS's request and the WCERS shall return all the Firm's properties to it. The Firm acknowledges that any intentional failure or delay on its part to deliver the Work Product to the WCERS will cause irreparable injury to the WCERS not adequately compensable in damages and for which the WCERS has no adequate remedy at law and the Firm accordingly agrees that the WCERS may in such event seek injunctive relief in a court of competent jurisdiction. The WCERS shall have full and unrestricted use of the Work Product for the purpose of completing the Services. In addition, each party will assist the other party in the orderly termination of this Agreement.

**9.3 Rights.** The rights and remedies of either party provided by this Agreement are in addition to any other rights and remedies provided by law or equity.

#### **ARTICLE 10 APPLICABLE LAWS**

This Agreement, and all actions arising hereunder, shall be subject to, and construed according to the law of the State of Michigan. The Firm also agrees it will not commence any action against the WCERS because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of the Agreement, in any courts other than those in the WCERS of Wayne, State of Michigan, unless original jurisdiction can be had in the United States District Court for the Eastern District of Michigan, Southern Division.

#### **ARTICLE 11 NOTICES**

All notices, consents, approvals, requests and other communications, (herein collectively called "Notices") required or permitted under this Agreement shall be given in writing and mailed by first-class mail and addressed as follows:

**If to the Firm:**

<Insert>

**If to the WCERS:**

Robert Grden.  
Executive Director  
Wayne County Employees' Retirement System  
28 W. Adams, 20<sup>th</sup> Floor  
Detroit, Michigan 48226

All Notices shall be deemed given on the day of mailing. Either party to this Agreement may change its address for the receipt of notices at any time by giving notice to the other as provided. Any Notice given by a party must be signed by an authorized representative of such party. Notwithstanding the requirement above as to the use of first class mail, termination notices, change of address notices, or other notices of a legal nature, shall be sent by registered or certified mail, postage prepaid, return receipt requested.

**ARTICLE 12**  
**SERVICE OF PROCESS**

The person named by the Firm in Article 12 shall receive Service of Process for the Firm.

**ARTICLE 13**  
**RIGHT TO AUDIT FIRM RECORDS**

- 13.1** The Firm shall maintain full and complete books, documents and/or ledgers, journals, accounts, or records. The records shall be kept in accordance with generally accepted accounting practices.
- 13.2** The Firm must make available to the WCERS, or its authorized representatives, including the Legislative Auditor General, at any time Monday through Friday, inclusive, between the hours of 8:00 a.m. and 5:00 p.m., at the WCERS's election, at that location among its offices which the Agreement is principally performed or which is closest and most convenient for the WCERS's auditors, all records, books, statements, reports, or other pertinent information that the WCERS deems necessary concerning the Firm's performance of Services under this Agreement, as may be required for audit purposes.

**ARTICLE 14**  
**DEBARMENT AND SUSPENSION**

- 14.1** The FIRM certifies to the best of its knowledge and belief, that:
- A. The FIRM and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal agency;
  - B. The FIRM and its principals have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connections with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - C. The FIRM and its principals are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any offense; and,
  - D. The FIRM and its principals have not, within a three-year period preceding this Agreement, had one or more public transactions (Federal, State or local) terminated for cause or default.

- 14.2** The certification in this clause is a material representation of fact upon which reliance was placed. When the WCERS determines that the FIRM knowingly rendered an erroneous certification, in addition to other remedies available to the WCERS, the WCERS may terminate this Agreement for cause or default.
- 14.3** No failure by a party to insist upon the strict performance of any term of this Agreement or to exercise any term after a breach constitutes a waiver of any breach of term. No waiver of any breach affects or alters this Agreement, but every term of this Agreement remains effective with respect to any other then existing or subsequent breach.
- 14.4** This document, including the Appendices, contains the entire agreement between the parties and all prior negotiations and agreements are merged in this document. Neither party has made any representations except those expressly set forth. No rights or remedies are, or will be acquired by either party by implication or otherwise unless set forth.

**ARTICLE 15**  
**MISCELLANEOUS**

- 15.1** Failure of a party to insist on the strict performance of this Agreement shall not constitute waiver of any breach of the Agreement.
- 15.2** It is understood that during the term of this Agreement, the WCERS may contract with other firms providing the same or similar Services.
- 15.3** The Firm agrees that it is not, and will not become, in arrears to the WCERS upon any contract, debt, or other obligation to the WCERS, including real property and personal property taxes.
- 15.4** The singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- 15.5** If any provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be judicially determined to be invalid or unenforceable, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those to which it is invalid or unenforceable, shall not be effected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 15.6** The headings of the Sections in this Agreement are for the convenience only and shall not be used to construe or interpret the scope or intent of this Agreement.
- 15.7** The Firm is authorized to negotiate in order to accomplish the objectives set forth in the Agreement. It is understood that any Agreement negotiated must be approved by the WCERS.
- 15.8** All proposed settlements are subject to the approval of the Retirement Commission. All proposed settlement shall be directed to the Executive Director for review and submission to the Retirement Commission for approval.

- 15.9** The WCERS shall not be obligated to make payments to the Firm prior to the receipt of information necessary to enable it to comply with its reporting or other legal obligations under the Internal Revenue Code and similar provisions of state or local law. Information required by the WCERS may include, but is not limited to, Form W-9, Request for Taxpayer Identification Number, and other information or certifications determined by the WCERS, in its sole discretion, to be reasonably necessary to evidence the Firm's legal status, address, taxpayer identification number, or other information relating to backup withholding pursuant to IRC Section 3406. The WCERS will furnish information returns (including Forms 1099 or other returns, as appropriate) to the Firm and appropriate government entities by their required due dates and in accordance with applicable law. Any payment due the Firm shall be reduced by the amount of any required backup withholding, and the Firm shall have no claim against the WCERS for additional amounts or payments under this Agreement for the amount of any backup withholding required by applicable law to be paid over to any government authority.
- 15.10** No failure by a party to insist upon the strict performance of any term of this Agreement or to exercise any term after a breach, constitutes a waiver of any breach of term. No waiver of any breach affects or alters this Agreement, but every term of this Agreement remains effective with respect to any other then existing or subsequent breach.
- 15.11** This document, including the Appendices, contains the entire agreement between the parties and all prior negotiations and agreements are merged in this document. Neither party has made any representations except those expressly set forth. No rights or remedies are, or will be acquired by either party by implication or otherwise unless set forth.
- 15.12** The Firm must comply with and must require its employees to comply with all applicable laws and regulations. The Firm must hold the WCERS harmless with respect to any damages arising from any violations of this Article by it or its employees.
- 15.13** DISPUTE RESOLUTION. The parties must attempt in good faith to resolve any dispute arising out of this Contract first by discussion between the Executive Director of WCERS and the attorney designated by the Firm having the authority to settle the dispute. Either party may give the other party written notice of any dispute not resolved in the normal course of business. Within five (5) days after notice, the receiving party must submit to the other party a written response. The notice and response must include a statement of each party's position and a summary of arguments supporting that position. Within five (5) days after delivery of the disputing party's notice, the Executive Director or designee shall meet with the Firm, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored. All negotiations pursuant to this provision are confidential and must be treated as compromise and settlement negotiations for the purposes of the Federal Rules of Evidence and Michigan Rules of Evidence. Prior to filing a lawsuit or initiating litigation, the parties shall use the Dispute Resolution procedure. No claims related to the Contract may be initiated more than 2 years after the expiration or termination of the Contract.

The parties have executed this Agreement.

**WCERS**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**[ Firm]**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_

312034

## **EXHIBIT A SCOPE OF SERVICE**

The WCERS engages the Firm and the Firm agrees to faithfully and diligently perform the Services set forth in this Agreement consistent with the standard of legal practice in the community. The Services are as determined by WCERS related to this matter:

### **1. General Legal Assistance**

- Attend meetings of the Retirement Commission and Committees as requested. There are 12 monthly and 4 quarterly meetings of the Retirement Commission in addition to Committee meetings.
- Provide written legal opinions as requested;
- Draft, clarify, and revise resolutions for the Retirement Commission;
- Present formal legal reports at meetings;
- Draft, review and provide recommendations on policies, procedures, and forms;
- Provide meeting and administrative support as requested;
- Organize and conduct seminars for Retirement Commission members and staff ;
- Assist staff with issues related to Domestic Relations Orders, Eligible Domestic Relations Orders, and Qualified Domestic Relations Orders;
- Assist staff on issues related to Freedom of Information requests;
- Provide legal guidance during administrative review hearings.

### **2. Internal Revenue Compliance**

- Report on qualified plan compliance and amendments;
- Advise the Retirement Commission and staff on reporting requirements.

### **3. Investment Compliance/Coordination Services**

- Review and provide legal support for investment objectives, policies, and guidelines;
- Review investment management agreements;
- Review investment consultant agreements;
- Report on investment compliance with State and Federal laws and regulations;
- Assist in drafting Requests for Proposals;
- Provide legal advice and support concerning real estate modification, workouts, and foreclosures;
- Provide advice and recommendation concerning loans, partnership, acquisitions, dispositions, plus commercial loans and investments.

### **4. Litigation Services**

- Represent the Retirement Commission in civil litigation in Federal and State trial courts;
- Represent the Retirement Commission in civil appeals in Federal, State and administrative hearings;
- Represent the Retirement Commission in arbitration and mediation hearings;
- Represent the Retirement Commission in federal bankruptcy litigation.



## 5. **Other Services**

- Upon mutual consent, any other task requested by the Retirement Commission.

Included in the Services are any meetings with WCERS staff required to accomplish the purpose of this Agreement as well as attendance at any Retirement Commission or other board or agency meetings related to the purpose of this Agreement.

The Firm must, upon reasonable notice, be available to participate in any proceeding, whether legal, administrative or otherwise, or in any internal WCERS preparatory meetings for the proceeding, in order to assist the WCERS in any matter relating to the purpose or outcome of this Agreement. The WCERS will compensate the Firm under a separately negotiated agreement for any Services rendered pursuant to this section.

## EXHIBIT B COMPENSATION

- A. Under this Agreement, the WCERS will pay the attorney members of the Firm the hourly rate of \$\_\_\_\_per hour:

The WCERS allows the Firm the discretion to assign attorney members with the specific subject matter legal expertise to represent the WCERS in this matter. **However, newly added attorney's hourly billing rates cannot exceed the agreed upon rates and must be discounted by 25% during the learning curve period.**

The rates for a paralegal or law clerk under this agreement shall be \$\_\_\_\_per hour.

- B. Unless otherwise specified in this Agreement, invoices for payment under this Agreement **MUST BE SUBMITTED WITHIN 45 DAYS OF THE DATE OF SERVICE OR PAYMENT WILL NOT BE MADE. ALL INVOICES MUST BE DETAILED AND SHOW ITEMIZED EXPENSES. All invoices shall indicate for each attorney, law clerk and paralegal the hours billed and the hourly rate. All time shall be charged in tenth of an hour increments. The total compensation under this Agreement cannot exceed \$\_\_\_\_\_.**
- C. Reimbursement for attendance at depositions is limited to one attorney.
- D. Reimbursement for attendance at hearings and meetings is limited to two attorneys.
- E. Administrative, clerical, secretarial, word processing and time accounting activities are not reimbursable expenses. Office supplies are not reimbursable.
- F. Reimbursement is allowed for the reasonable cost of meals and lodging when representation requires travel beyond fifty (50) miles of the corporate limits of the WCERS of Wayne. Travel time is reimbursable at one-half the normal hourly rate.
- G. The following Services shall be invoiced at the rates which represent the actual costs to the Firm: necessary local deliveries, telephone, transcript costs, postage, express mail services, outside printing or copying, filing, notary, and miscellaneous like expenses directly related and necessary.
- H. Copying (in-house) rates shall not exceed \$0.25 per page.
- I. Any costs or reimbursable expenses not enumerated in this Agreement shall require the prior written approval of the Executive Director.
- J. Expert witnesses shall not be retained or paid without prior approval of the WCERS.
- K. The Firm is responsible for notifying the Executive Director two (2) months prior to the time it is anticipated that the Agreement's cap will be reached to enable time for processing a renewal or a Contract Modification. The Firm will not be paid for work that is not authorized pursuant to a valid agreement.

- L. Research. The Firm was selected to represent the WCERS because of its expertise. Consequently, the WCERS shall not be charged for basic research. Other research on specific issues must be billed at the agreed on hourly rate for the person performing the research. Computerized research will not be compensated unless specifically provided for by this Agreement.
- M. The following are excluded from this Agreement are not compensable, and will not be accepted in statements/invoices submitted to WCERS:
1. Reviewing/discussing legal service invoices.
  2. Preparing invoices.
  3. Reviewing and preparing responses to solicitation documents.
  4. Attendance at Retirement Commission meetings for the purposes of approval of this Agreement, or any modification/renewal thereto.
  5. Preparation of required audit letters requested by the WCERS or an affiliated accounting firm.
  6. Other non-legal services as determined by the WCERS.
  7. Communications or responses related to required Disclosures (i.e. MI PA 314).
  8. Billing for interoffice conferences.
  9. Billing for training of new attorneys.
  10. Billing for file reviews or research that do not advance the assigned matter.
  11. Billing for administrative matters such as file creation and data entry, preparation or review of billing by attorney, supervisory attorneys file review, secretarial work.

## EXHIBIT C INSURANCE

The Firm shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Firm, its agents, representatives, or employees.

### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Firm has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers’ Compensation** insurance as required by the State of Michigan, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability** (Errors and Omissions) Insurance coverage appropriate to the legal profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Firm maintains higher limits than the minimums shown above, the WCERS requires and shall be entitled to coverage for the higher limits maintained by the Firm. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the WCERS.

### NECESSARY INSURANCE PROVISIONS

**The insurance policies are to contain, or be endorsed to contain, the following provisions:**

1. **Additional Insured Status:** The WCERS, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Firm’s including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Firm’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
2. **Primary Coverage:** For any claims related to this contract, the Firm’s insurance coverage shall be primary insurance as respects the WCERS, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the WCERS, its officers, officials, employees, or volunteers shall be excess of the Firm’s insurance and shall not contribute with it.

3. **Notice of Cancellation:** Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the WCERS.
4. **Waiver of Subrogation:** The Firm hereby grants to WCERS a waiver of any right to subrogation which any insurer of said Firm may acquire against the WCERS by virtue of the payment of any loss under such insurance. The Firm agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the WCERS has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the WCERS. The WCERS may require the Firm to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the WCERS.
7. **Claims Made Policies:** If any of the required policies provide coverage on a claims-made basis:
  - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
  - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Firm must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
8. **Verification of Coverage:** Firm shall furnish the WCERS with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the WCERS before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Firm's obligation to provide them. The WCERS reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
9. **Subcontractors:** Firm shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that WCERS is an additional insured on insurance required from subcontractors.
10. **Special Risks or Circumstances:** WCERS reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.