

SUBSTANTIAL FORM OF PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is between the Wayne County Employees Retirement System of Wayne County, Michigan, ("WCERS") and _____, a _____ corporation (the "Contractor").

1. PURPOSE

1.01 The WCERS is required to _____.

1.02 The Contractor is experienced and able to perform technical and professional services. The Contractor desires to provide these services for WCERS.

2. ENGAGEMENT OF CONTRACTOR

2.01 WCERS engages the Contractor and the Contractor agrees to faithfully and diligently perform the services according to the terms and conditions contained in this Contract and consistent with the standard of practice in the community.

3. SCOPE OF SERVICE

3.01 The Contractor must perform the services described in Appendix A in a satisfactory manner, as determined within the discretion of WCERS. The Contractor warrants that the Contractor is authorized to do business under the laws of the State of Michigan and is qualified to perform the Services in this Contract.

3.02 If there is any dispute between the parties regarding the extent and character of the services to be performed, the interpretation and determination of WCERS governs.

3.03 The services include all conferences and consultation deemed necessary by the WCERS to properly and fully perform the services.

3.04 All services are subject to review and approval of WCERS for completeness and fulfillment of the requirements of this Contract. Neither WCERS review, approval, or payment for any of the services shall be construed to operate as a waiver of any rights under the Contract, and the Contractor shall be and remain liable in accordance with the applicable laws for all damages to WCERS caused by the Contractor's negligent performance or nonperformance of any of the Services furnished under this Contract.

4. TERM OF CONTRACT

4.01 This Contract begins on _____ and ends _____. The Contractor must expediently perform the services to achieve the objectives of this Contract. Upon written agreement, the parties may renew the contract for one year.

5. DATA TO BE FURNISHED CONTRACTOR

5.01 Upon the request of the Contractor, without charge, WCERS must furnish copies of all information, data, reports, records, etc., that WCERS thinks is necessary to do the services. The Contractor is entitled to visit WCERS' offices and key facilities as approved by the WCERS, during regular business hours to obtain the necessary data. The Contractor will schedule conferences at convenient times with key administrative personnel of WCERS to gather the information.

6. PERSONNEL

6.01 To induce WCERS to enter into the Contract, the Contractor represents and warrants that the Contractor 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 Contract is within the Contractor's authorized powers, and is not in contravention of federal, state, or local law.

6.02 The Contractor warrants that all employees of the Contractor 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.

6.03 Each employee must devote the time and professional ability as is necessary to most effectively and efficiently perform the services according to professional standards.

6.04 Whenever an employee assigned to this Contract must be replaced for any reason, the Contractor 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 approval from WCERS in writing.

6.05 Employees' daily working hours may be determined by the Contractor. When the employees are working in or about a WCERS facility, Contractor agrees to adjust its employees' daily working hours to be the same as those worked by WCERS employees working at the facility.

7. ADMINISTRATION

7.01 The Contractor must inform WCERS as soon as the following types of conditions become

known:

- A. Probable delays or adverse conditions which do or may materially prevent the meeting of the objectives of the Contract. The Contractor must accompany this disclosure with a statement of any remedial action taken or contemplated by it; and
- B. Favorable developments or events which enable meeting time schedules or goals sooner than anticipated.

7.02 The Contractor must regularly inform WCERS of its activities in connection with its duties and must keep WCERS informed of the status of any program. The Contractor is not required to perform in a manner materially in conflict with requirements imposed by any applicable law including any statute, WCERS charter, ordinance, resolution or executive order.

7.03 The Contractor shall have no authority in the name of WCERS to borrow money, commence or defend litigation, spend money, or enter into contracts except as otherwise provided in this Contract.

8. COMPENSATION

8.01 WCERS agrees to pay the Contractor at the rates in Appendix B, attached. The compensation includes all remuneration to which the Contractor may be entitled. WCERS will not pay the Contractor for overtime, holiday or other premium charges or other benefits in addition to those stated in Appendix B. Maximum compensation shall not exceed \$_____.

8.02 The Contractor 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 WCERS in any matter relating to the purpose or outcome of this Contract. WCERS will compensate the Contractor under a separately negotiated agreement for any services rendered pursuant to this section.

9. METHOD OF PAYMENT

9.01 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, 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 Contractor must sign the invoice and send it to WCERS for each calendar month. This section is limited by the provisions of Article 8 with regard to the amounts payable for performance.

9.02 The Contractor must direct invoices to the attention of the individual specified in the Notice provisions, Article 19.

9.03 The Contractor must submit as part of the invoices, monthly progress reports indicating the Contractor's activities during the month and being signed by an authorized officer of the Contractor.

10. RECORDS - ACCESS

10.01 The Contractor must maintain complete books, ledgers, journals, accounts, or records in which it keeps all entries reflecting its operation pursuant to this Contract. The Contractor must keep the records according to generally accepted accounting practices and for a minimum of 7 years after the Contract's termination and completion. The Contractor must also maintain copies of all records, correspondence and documents, including electronically stored information, prepared in anticipation of this Contract, and for this Contract, for a period of 7 years after the Contract's termination and completion.

10.02 WCERS and/or Corporation Counsel have the right to examine and audit all books, records, documents and other supporting data as they deem necessary of the Contractor, or any subcontractors, or agents rendering services under this Contract, whether direct or indirect, which will permit adequate evaluation of the services or the cost or pricing data submitted by the Contractor. The Contractor must include a similar covenant allowing for audit by the WCERS and/or Corporation Counsel in any contract it has with a consultant or agent whose services will be charged directly or indirectly to WCERS. WCERS may delay payment to the Contractor pending the results of any such audit without penalty or interest.

10.03 The Contractor agrees that representatives of WCERS are entitled to make periodic inspections to ascertain that the Contractor is properly performing the services. The inspections may be made at any time during normal business hours of the Contractor. If, in the course of the inspections, the representatives of WCERS should note any deficiencies in the performance of the services of the Contractor, or any other mutually agreed upon performance deficiencies, the alleged deficiencies must be reported promptly to the Contractor, in writing. The Contractor agrees to promptly remedy and correct any reported

deficiencies within 10 days of notification by WCERS.

10.04 If, as a result of any audit conducted by or for WCERS, the State of Michigan or a Federal agency relating to the Contractor's performance under this Contract, a discrepancy should arise as to the amount of compensation due the Contractor, WCERS may retain the amount of compensation in question from any funds allocated to the Contractor but not yet disbursed under the Contract. Should a deficiency still exist, WCERS may offset such a deficiency against the compensation to be paid the Contractor in any successive or future Contracts between the parties.

11. RELATIONSHIP OF PARTIES

11.01 The relationship of the Contractor to WCERS is and will continue to be that of an independent contractor. No liability or benefits, such as workers' compensation, pension rights, or insurance rights, arising out of, or related to a contract for hire or employer/employee relationship, accrues to either party or either party's agent, subcontractor or employee as a result of this Contract. No relationship, other than that of independent contractor will be implied between the parties, or either party's agent, employee, or subcontractor. The Contractor agrees to hold WCERS harmless from any claims, and any related costs or expenses.

11.02 For all purposes, WCERS employees will remain employees of WCERS and the Contractor's employees will remain employees of the Contractor. The Contractor is being retained by WCERS as an independent contractor to provide services to WCERS, and is not being retained in any capacity as a joint enterprise or venturer with WCERS. The Contractor also covenants that none of its employees are or will be, during the period of this Contract, employees of WCERS.

12. INSURANCE

12.01 The Contractor, at its expense, must maintain during the term of this Contract the following insurance:

- A. Professional liability insurance endorsed to include Personal and Advertising Injury, Products Completed with minimum limits of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate with three year continuous claim coverage.
- B. Workers' Compensation Insurance which meets Michigan statutory requirements.
- C. Commercial General Liability Insurance with minimum limits, for bodily injury and property damage, of Two Million Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.
- D. Commercial Automobile Liability owned, non-owned, and leased vehicles) with minimum combined single limits of One Million Dollars (\$1,000,000).

12.02 All insurance must be effected under valid and enforceable policies, issued by recognized, responsible insurers qualified to conduct business in Michigan which are well-rated by national rating organizations. All companies providing the coverage required shall be licensed or approved by the Insurance Bureau of the State of Michigan and shall have a financial rating no lower than XI and a policyholder's service rating no lower than [A] as listed in A.M. Best's Key Rating guide, current edition or interim report.

12.03 Insurance policies must name WCERS as an additional insured and loss payee, and must not be canceled or materially changed without at least 30 days prior notice from the Contractor to WCERS. The Contractor must submit certificates evidencing the insurance to the Risk Management Division at the time the Contractor executes the Contract, and at least 15 days prior to the expiration dates of expiring policies.

13. INDEMNIFICATION

13.01 Except for claims arising from gross negligence by WCERS, the Contractor agrees to indemnify, defend and save harmless WCERS 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 WCERS because of any of the following occurring during the term of this Contract:

- A. Any negligent or tortious act, error, or omission held in a court of competent jurisdiction to be attributable, in whole or in part to the Contractor, or any of its personnel, employees, consultants, agents, or any entities associated, affiliated, (directly or indirectly) or subsidiary to the Contractor now existing, or to be created, their agents and employees for whose acts any of them might be liable.
- B. Any failure by the Contractor, or any of its employees to perform its obligations either implied or expressed under this Contract.

13.02 The Contractor agrees that it is its responsibility and not the responsibility of WCERS to safeguard the property and materials that the employees of the Contractor use in performing this Contract. The Contractor must hold WCERS harmless for costs and expenses resulting from any loss of the property and materials used by its employees pursuant to the performance of the Contractor under this Contract.

13.03 Nothing in this article shall be deemed to relieve the Contractor of its duty to defend WCERS, as specified, pending a determination of the respective liabilities of the Contractor and WCERS, by legal proceeding or agreement. WCERS shall cooperate with the Contractor in the defense against the suit. In no event shall the Contractor make any admission of guilt or liability on behalf of WCERS without WCERS prior, written consent.

13.04 For purposes of these provisions, the term "WCERS" includes WCERS and all other associated, affiliated, or subsidiary departments or divisions now existing or to be created, their agents and employees.

13.05 This indemnity applies without regards to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. This indemnity survives delivery and acceptance of services.

13.06 This indemnity must not be construed as a waiver of any governmental immunity WCERS, its agencies, or employees, has as provided by statute or modified by court decisions.

14. BANKRUPTCY OR INSOLVENCY

14.01 If the Contractor is adjudicated bankrupt or insolvent, or if a trustee is appointed over the Contractor or any of its property, whether it is a third party or Contractor as debtor-in-possession (referred to as "Contractor" in this Article unless the context clearly requires otherwise) the following rights, obligations and limitations control:

- A. Contractor or any trustee must not assign any or all of its rights, title or interest, in or to this Contract, as this Contract is for the delivery of professional services and related services, as to which WCERS is entitled to insist upon performance solely by the Contractor.
- B. Contractor or any trustee may only assume this Contract if it provides adequate assurance of future performance. Adequate assurance of future performance means proof reasonably satisfactory to WCERS of:
 - (i) adequate financial capacity to employ or contract with sufficient personnel to perform the services assigned to the Contractor as provided in this Contract, and to pay for all services contracted for by the Contractor;
 - (ii) adequate financial capacity to own, operate, lease or obtain sufficient facilities and supplies to perform the services assigned to the Contractor as provided for in this Contract; and
 - (iii) adequate financial and professional capacity to maintain the professional standard provided in this Contract. The reasonable determination of WCERS as to the adequate professional capacity of the Contractor is determinative.
- C. Because of the unique nature of the services this Contract requires the Contractor to provide, the Contractor agrees that any requests by WCERS that the trustee or it as debtor-in-possession assume or reject this Contract in a shorter time than provided for in 11 U.S.C. §365 is reasonable so long as the trustee or Contractor receives no less than 5 business days' notice.
- D. If this Contract is terminated during bankruptcy proceedings or if the trustee or debtor-in-possession successfully and properly obtains a court order rejecting this Contract, the Contractor as debtor-in-possession or its trustee must cooperate with WCERS in arranging for the orderly transfer of responsibilities to persons or entities as WCERS may designate. The rejection is not effective until the orderly transfer of responsibilities, consistent with sound professional practice, has been completed.

14.02 Although neither party has the right to terminate the Contract merely because the other is adjudicated bankrupt or insolvent or a trustee or a debtor-in-possession is appointed over any parties' property, each party retains all of the other termination rights set forth elsewhere in this Contract during the period of any proceedings under the Federal Bankruptcy Code.

15. NOTICE OF MATERIAL CHANGES

15.01 The Contractor must immediately inform WCERS of material changes in its operation, ownership or financial condition. Material changes include, but are not limited to:

- A. Reduction or change in staffing assigned to the Contract.
- B. Decrease in, or cancellation of, insurance coverage.
- C. Delinquent payment, or nonpayment, of tax obligations.
- D. Delinquent payment, or nonpayment, of payroll obligations.
- E. Delinquent funding, or nonfunding, of pension or profit sharing plans.
- F. Delinquent payment, or nonpayment, of subcontractors.
- G. Termination of, or changes in, subcontracts.
- H. Transfer, sell, assignment or delegation to an entity other than the Contractor, of ownership or administrative services.

16. TERMINATION

16.01 Except as provided in Article 17, WCERS may terminate this Contract without cause at any time, without incurring any further liability, other than as stated in this Article by giving written notice to the Contractor of the termination. The notice must specify the effective date, at least 60 days prior to the effective date of the termination, and this Contract will terminate as if the date were the date originally given for the expiration of this Contract. If the Contract is terminated, WCERS will pay the Contractor for the services rendered prior to termination, as soon as can be authorized. WCERS will compute the amount of the payment on the basis of the services rendered, and other means which, in the judgment of WCERS represents a fair value of the services provided, less the amount of any previous payments made. The final payment constitutes full payment. If the Contractor accepts the payment, the Contract is satisfied. The parties agree that no payments under this section will exceed the amount payable under Article 8.

16.02 WCERS may terminate this Contract if the Contractor is in default of any of its obligations under the Contract, or has failed to comply with any of the material terms and conditions of this Contract, by giving written notice to the Contractor. Before WCERS exercises its right to declare the Contractor in default, the WCERS must give the Contractor Notice of its default status and the reasons for such status. If the Contractor does not cure the default within 5 working days, the Contract is deemed terminated 25 days after the date of the Notice. If after Notice, WCERS determines that the Contractor was not in default, the rights and obligations of the parties are the same as if the Notice had not been issued. Upon terminating the Contract, WCERS shall not incur any further liability to Contractor, except as provided in this Article, which sets forth Contractor's exclusive remedies. WCERS may procure, upon such terms and in such manner as WCERS may deem appropriate, Services similar to those terminated, and the Contractor shall be liable to WCERS for any costs to obtain and transition similar services, provided the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Article. In addition to any legal remedies otherwise available to WCERS by law or equity, the Contractor shall be responsible for all additional costs, charges, and damages incurred by WCERS in connection with the completion of the Contract. Such expenses shall be deducted from any monies due or which may become due the Contractor under the Contract. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor shall pay, on demand, such excess amount to WCERS. Should a deficiency exist, the WCERS may offset such a deficiency against the compensation to be paid the Contractor in any concurrent, successive or future contracts between the parties. All excess procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise. The rights and remedies of WCERS are not exclusive and are in addition to any other rights and remedies provided by law, including the collection of liquidated damages. The Contractor shall be liable to WCERS for any damages WCERS sustains by virtue of the Contractor's breach or any reasonable costs WCERS might incur in enforcing or attempting to enforce this Contract. Such costs shall include costs to secure the deliverables from another contractor, reasonable fees and expenses for attorneys, expert witnesses and other consultants.

16.03 After receipt of a Notice of Termination and except as otherwise directed by WCERS, the Contractor must:

- A. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
- B. Obligate no additional contract funds for payroll costs and other costs beyond the

- date as WCERS specifies.
- C. As of the date the termination is effective, present all Contract records and submit to WCERS the records, data, notes, reports, discs, and documents ("Records") as WCERS specifies, 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 30 days a final report of receipts and expenditures of funds relating to this Contract.
- E. Place no further orders on subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this Contract as is not terminated;
- F. Terminate all orders and subcontracts to the extent that they relate to the portion of work so terminated;
- G. Submit within 30 days a listing of all creditors, subcontractors, lessors, and other parties with which the Contractor has incurred financial obligations pursuant to the Contract.

16.04 Upon termination of this Contract, all Records prepared by the Contractor under this Contract or in anticipation of this Contract must, at the option of WCERS, become its exclusive property, whether or not in the possession of the Contractor. The Records are free from any claim or retention of rights on the part of the Contractor except as specifically provided. WCERS must return all the properties of the Contractor to it.

16.05 Any intentional failure or delay by the Contractor to deliver the Records to WCERS will cause irreparable injury to WCERS not adequately compensable in damages and for which WCERS has no adequate remedy at law. The Contractor will pay WCERS \$500.00 per day as damages, and not as a penalty, until it delivers the Records to WCERS. WCERS may seek and obtain injunctive relief in a court of competent jurisdiction and compel delivery of the Records which the Contractor consents to as well as all applicable damages and costs. WCERS has unrestricted use of the Records for the purpose of completing the services.

16.06 Access to the records prior to delivery must be restricted to authorized representatives of the WCERS and the Contractor. The Contractor has no right to disclose or use any information gathered in the course of its work without obtaining the written concurrence of WCERS. All the information must be confidential and handled in such a manner at all times as to preserve confidentiality. The Records as well as any related products and materials are proprietary to WCERS, having been developed for WCERS for its own and sole use.

16.07 In addition, each party will assist the other party in the orderly termination of this Contract and the transfer of all aspects, tangible or intangible, as may be necessary for the orderly, non-disrupted business continuance of each party.

17. ETHICS IN CONTRACTING

17.01 The Contractor shall comply with the WCERS Ethics Policy.

17.02 Contractor agrees that the failure to comply with the Ethics Policy constitutes a material breach of this Contract, sufficient to warrant immediate termination of the Contract.

18. NON-DISCRIMINATION PRACTICES

18.01 The Contractor must comply with:

- A. Titles VI and VII of the Civil Rights Act (42 U.S.C. §2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
- B. The Age Discrimination Act of 1985 (42 U.S.C. §6101-07).
- C. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).
- D. The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and its associated regulations.
- E. The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons With Disabilities Civil Rights Act (P.A. 1976 No. 220).

18.02 The Contractor must not:

- A. Refuse to recruit, hire, employ, promote or to bar or discharge from employment an individual, or discriminate against an individual in compensation, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital

- B. status, handicap, sex or sexual orientation, religion, familial status, height or weight. Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects the employment status of an employee because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
- C. Print or publish or cause to be printed or published a notice, application, or advertisement relating to employment by the Contractor indicating a preference, limitation, specification, or discrimination based upon race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
- D. Except as permitted by rules and regulations promulgated pursuant to applicable state or federal law, make or use a written or oral inquiry or form of application that elicits or attempts to solicit information concerning the race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight, of prospective employees. Contractor also shall not make or keep a record of that information or disclose such information.
- E. Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on religion, race, color, creed, national origin, age, height, weight, marital status, handicap, sex, or sexual orientation.

18.03 The Contractor must notify any subcontractor of the obligations relative to non-discrimination under this Contract when soliciting the subcontractor. The Contractor will include the provisions of this Article in any subcontract, as well as provide WCERS with a copy of any subcontract agreement.

18.04 The Contractor and its subcontractors must not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Contract, with respect to hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight. This Section does not apply if it is determined that the requirements are bona fide occupational qualifications reasonably necessary to perform the duties required for employment. The burden of proof that the occupational qualifications are bona fide is upon the Contractor.

18.05 Breach of any of the covenants in this Article may be regarded as a material breach of this Contract.

19. NOTICES

19.01 All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Contract must be given in writing and mailed by first-class mail and addressed as follows: If to the Contractor:

Phone: _____

Fax: _____

E-mail: _____

If to WCERS:

Phone: _____
Fax: _____
E-mail: _____

19.02 All notices are deemed given on the day of mailing. Either party to this Contract 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.

19.03 Termination notices, change of address notices, and other notices of a legal nature, are an exception and must be sent by registered or certified mail, postage prepaid, return receipt requested.

20. JURISDICTION AND LAW

20.01 This Contract, and all actions arising from it, must be governed by, subject to, and construed according to the law of the State of Michigan. The Contractor consents to the personal jurisdiction of any competent court in Wayne County Michigan, for any action arising out of this Contract. Service of process at the address and in the manner specified in this Contract will be sufficient to put the Contractor on notice. The Contractor will not commence any action against WCERS because of any matter arising out of or relating to the validity, construction, interpretation and enforcement of this Contract, in any courts other than those in the County of Wayne, State of Michigan unless original jurisdiction is in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court or the Michigan Court of Appeals.

21. CONFIDENTIAL INFORMATION

21.01 If WCERS discloses confidential information to the Contractor's employees pertaining to WCERS's past, present and future activities, the Contractor must instruct its employees to regard all information gained by each person as a result of the services to be performed as information which is confidential and not to be disclosed to any organization or individual without the prior written consent of the WCERS.

21.02 The Contractor agrees to take appropriate action with respect to its employees to insure that the obligations of nonuse and non-disclosure of confidential information concerning this Contract can be fully satisfied.

22. COMPLIANCE WITH LAWS

22.01 The Contractor must comply with and must require its employees to comply with all applicable Federal and State laws and regulations.

22.02 The Contractor must hold WCERS harmless with respect to any damages arising from any violations of this Article by it or its employees.

23. CHANGES IN SCOPE/SERVICE

23.01 WCERS may request changes to the scope of Services to be furnished or performed by the Contractor under the Contract, as well as changes in the time of performance of the Contract. All such changes shall be authorized by either Change Order or Contract Modification .

23.02 If any such change request increases or decreases the Contractor's cost of, or the time required for, performance of any part of the Services under this Contract, an adjustment may be made and the Contract modified in writing accordingly.

23.03 Contractor shall provide WCERS with a written proposal to WCERS change request within five (5) business days of receipt of any such request. Contractor'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.

23.04 Contractor acknowledges that any change in the Contract 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.

23.05 If WCERS does not accept the Contractor's proposal, 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.

23.06 Any adjustment in the Contract price shall be computed in the manner as the parties may agree. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract 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 Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

23.07 No action, conduct, omission, prior failure or course of dealing by WCERS shall act to waive, modify, change or alter the requirement that Contract Modifications must be in writing and signed by WCERS and the Contractor. Contractor further acknowledges that Change Orders and Contract Modifications are the exclusive method for effecting any change to the Contract.

23.08 No change to this Contract is effective unless it is in writing and references this Contract. If the change is a Contract Modification, it must be signed and acknowledged by duly authorized representatives of both parties. If the change is a Change Order, it must be signed by an authorized representative of WCERS.

24. MISCELLANEOUS

24.01 The Contractor covenants that it is not, and will not become, in arrears to WCERS upon any contract, debt, or any other obligation to WCERS, including real property and personal property taxes.

24.02 Articles 12, 13, 19, and 21 survive termination of the Contract.

24.03 All the provisions of this Contract are "covenants" and "conditions" as though the words specifically expressing or imparting covenants and conditions are used in each provision.

24.04 If any Affiliate of the Contractor takes any action which, if done by the Contractor, would constitute a breach of this Contract, the action is deemed a breach by the Contractor. "Affiliate" is a "parent", subsidiary or other company controlling, controlled by or in common control with the Contractor.

24.05 Neither party is responsible for force majeure events. If there is a dispute between the parties with regard to what constitutes a force majeure event, WCERS' reasonable determination is controlling.

24.06 Unless the context otherwise requires, the words, "herein", "hereof" and "hereunder", and other words of similar import, refer to this Contract as a whole and not to any particular article, section, or other subdivision.

24.07 The headings of the articles in this Contract are for convenience only and must not be used to construe or interpret the scope or intent of this Contract or in any way affect the Contract.

24.08 As used, the singular includes the plural, the plural includes the singular, and the use of any gender is applicable to all genders.

24.09 The Contractor warrants that any products sold or processes used in the performance of this Contract do not infringe upon or violate any patent, copyright, trademark, trade secret or any other proprietary rights of any third party. If a third party makes a claim against it, WCERS must promptly notify the Contractor. The Contractor must defend the claim in the name of WCERS, at the Contractor's expense. The Contractor must indemnify WCERS against any loss, cost, expense or liability arising out of the claim, whether or not the claim is successful.

24.10 No failure by a party to insist upon the strict performance of any term of this Contract 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 Contract, but every term of this Contract remains effective with respect to any other then existing or subsequent breach.

24.11 The Contractor shall secure all permits necessary to perform the services and shall comply with all statutes, ordinance, and laws.

24.12 If any provision of this Contract or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Contract, or the application of the provision to persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable.

24.13 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.

24.14 The Contractor must not assign this Contract, nor any part, or subcontract any of the work or services to be performed without prior written approval from WCERS.

24.15 WCERS or the Contractor may contract with other firms providing the same or similar services so long as the Contractor's obligations to WCERS contained in this Contract will not be affected in any manner.

25. AUTHORIZATION AND CAPABILITY

25.01 The Contractor warrants to WCERS that it has taken all corporate actions necessary for the authorization, execution, delivery and performance of this Contract. It is ready to perform its obligations. The Contractor further warrants that the person signing this Contract is authorized to do so on behalf of the Contractor and is empowered to bind the Contractor to this Contract.

26. SIGNATURE

26.01 WCERS and the Contractor, by their authorized officers and representatives have executed this Contract.

CONTRACTOR

WCERS

By: _____

By: _____

Its: _____

ROBERT GRDEN
Its:EXECUTIVE DIRECTOR

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Rev 8/29/12