

SERVICES AGREEMENT
by and between:
CITY OF WICHITA, KANSAS
and
ARNERICH MASSENA & ASSOCIATES, INC.

THIS AGREEMENT made and entered into this 1st Day of October, 2006, by and between City of Wichita, Kansas, (hereinafter referred to as "City"), and Arnerich Massena & Associates, Inc., a corporation organized in the State of Oregon, and authorized to conduct business in the State of Kansas (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, pursuant to a request by the City of Wichita's Deferred Compensation Board, Contractor has submitted a proposal to provide consulting services relating to 457 deferred compensation plans, as needed by City; and

WHEREAS, City desires to engage Contractor to perform said services; and

WHEREAS, City and Contractor desire to state the terms and conditions under which Contractor will provide said services.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

1. **Purpose.** Contractor will provide the professional 457 deferred compensation plan consulting services as outlined in Contractor's proposal to City, dated August 2006, and incorporated herein by reference. The services to be performed pursuant to this Agreement shall follow the provisions set forth in said response, and shall hereafter be referred to as "Services." Contractor will participate in the development of a request for proposal process, which will result in City selecting a plan administrator, and shall be part of a committee comprised of the Deferred Compensation Management Board and City staff during the evaluation process of proposal responses, and making recommendation for award, with the goal of having a plan administrator in place by September 1, 2007. Services will include:

- a) Consulting with the Deferred Compensation Management Board and City staff with regard to needs and objectives;
- b) Development of selection criteria and requirements to be used to issue a request for proposal to select a plan administrator that will offer the best benefit to City employees;
- c) Participation in the evaluation process of proposal responses received, including any interviews and final recommendation for award;
- d) Participation in contract negotiation with selected provider(s); and
- e) Assisting in the implementation of any Plan changes and/or conversions.

The parties agree that time is of the essence in Contractor's performance of Services.

2. **Term.** The term of this contract commences upon approval of this contract by both parties, and terminates upon full completion of the services outlined in Contractor's proposal to City, dated August 2006. Contractor shall be compensated for services contemplated by this contract that are performed by Contractor prior to the execution of this Agreement.

3. **Compensation.** The amount to be paid to Contractor by City as compensation for performance of Services is the flat fee of \$50,000.00, to be paid to Contractor as shown in the table below. This fee includes all of Contractor's time, labor, equipment, expenses, and all other expenses including travel associated with the provision of Services, and shall be the sole compensation rendered to Contractor hereunder. Contractor shall invoice City upon reaching the payment milestones in the table shown below. Invoices shall be submitted directly to the City of Wichita Pension Management, City Hall – 12th Floor, 455 N. Main St., Wichita, Kansas 67202, or to such address as City may identify to Contractor. All invoices shall show the contract number and federal employer identification number. Each invoice submitted by Contractor shall be paid by City within thirty (30) days.

Services Provided	Compensation	Payment Milestone
Consult with City staff with regard to needs and objectives.	\$10,000.00	Upon execution of this Agreement.
Develop the selection criteria and requirements to be used to issue a request for proposal (RFP) to select a plan administrator that will offer the best benefit to City employees.	\$15,000.00	Upon issuance of an RFP for plan administrator.
Participate in the evaluation process of proposal responses received, including any interviews and final recommendation for award; participate in contract negotiation with selected provider(s); and assist in the implementation of any Plan changes and/or conversions.	\$10,000.00	Upon final recommendation for award.
Same as above	\$15,000.00	Upon Plan transition and receipt of recouped project cost from Plan fee rebate.

4. **Notification.** Notifications required pursuant to this contract shall be made in writing and mailed to the following addresses. Such notification shall be deemed complete upon mailing.

City: City of Wichita Pension Management

Attn: Barbara Davis
City Hall – 12th Floor
455 N. Main St.
Wichita, KS 67202
Phone: (316) 268-4544
Fax: (316) 268-4656

and

Contractor: Arnerich Massena
Attn: Jayson Davidson
2045 NE Martin Luther King, Jr., Blvd.
Portland, OR 97211
Phone: (503) 239-0475
Fax: (503) 239-0369

5. **Termination of Contract.** Notwithstanding any other provision of this Agreement, City may terminate this Agreement for any reason if it determines in its sole discretion that such termination is in its best interest. In such event, City shall provide written notice to Contractor and termination shall be effective immediately. Contractor shall be paid for all Services provided and applicable expenses incurred through the date of such termination, which are not the subject of a good faith dispute. In no event after termination will Contractor be entitled to an amount in excess of the maximum contract amount.

6. **Incorporation of Appendices.** (a) Appendix A (General Contract Provisions); and (b) Contractor's proposal to City, dated August 2006, are attached hereto and made a part hereof as if fully set out herein.

7. **Entire Agreement.** This agreement and the Appendices attached hereto contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor of any force or effect.

8. **Order of Precedence.** In the event of conflict between the terms of the any of the contract documents, the order of precedence shall be: (a) this Agreement; (b) Appendix A; and (c) Contractor's proposal to City, dated August 2006.

9. **Authority.** Each person executing this Agreement represents and warrants that he or she is duly authorized to do so on behalf of the entity that is a party hereto.

Witness our signatures the day and year first above written.

ARNERICH MASSENA & ASSOCIATES, INC.

By: M. Lynn Spruill

Name: M. Lynn Spruill

Title: COO / CFO

CITY OF WICHITA, KANSAS:

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: Gary E. Rebeuty, Esq.

**APPENDIX A
GENERAL CONTRACT PROVISIONS**

1. AUTHORITY TO CONTRACT.

- a) **Affirmation of Legal Authority.** Contractor assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the signing of this contract, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Contractor to act in connection with the application and to provide such additional information as may required.

- b) **Required Documentation.** Domestic (Kansas) corporations shall 1) furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. Foreign (non-Kansas) corporations shall furnish evidence of authority to transact business in Kansas, in the form of a Certificate signed by the Kansas Secretary of State; and 2) a copy of the Corporation Resolution evidencing the authority to sign the Contract Documents, executed by the Corporation's Secretary or Assistant Secretary.

2. INDEPENDENT CONTRACTOR RELATIONSHIP.

It is agreed that the legal relationship between Contractor and City is of a contractual nature. Both parties assert and believe that Contractor is acting as an independent contractor in providing the services and performing the duties required by City hereunder. Contractor is at all times acting as an independent contractor and not as an officer, agent, or employee of City. As an independent contractor, Contractor and employees of Contractor, will not be within the protection or coverage of City's worker's compensation insurance, nor shall Contractor, and employees of Contractor, be entitled to any current or future benefits provided to employees of City. Further, City shall not be responsible for withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by City to Contractor.

3. PERSONNEL.

- a) **Qualified Personnel.** Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any other contractual relationship with City. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this contract.
- b) **Minimum Wages.** Contractor will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.
- c) **Employee Conflict of Interest.** Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

- d) **Contractor's Safeguard.** The parties to this agreement recognize that entities or persons providing government-funded services to the public are the subject of public scrutiny. Consequently, by entering into this agreement Contractor assumes an affirmative and ongoing duty during the pendency of this contract to maintain compliance with requirements set forth in Section 4 below.

4. PROHIBITION OF CONFLICTS OF INTEREST.

- a) **Interest of Public Officials and Others.** No officer or employee of City, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this contract which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested; nor shall any officer or employee of City or any member of its governing body or other public official have any interest, direct or indirect, in this contract or the proceeds thereof.
- b) **Interest of Contractor.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract.
- c) **Employee Conflicts.** Situations in which 1) an employee of the City shall also be an employee of Contractor at time of agreement, 2) an employee of Contractor seeks additional/alternate employment with City during pendency of agreement, or 3) an employee of City seeks additional/alternate employment with Contractor during pendency of agreement, shall require written notice to the City at the addresses listed in the Agreement. The City shall make every effort to assure that such employees do not have any authority to approve 1) grant funds, 2) agreements, or 3) affiliate status to the Contractor or Contractor's competitors.
- d) **Notice to Bidders.** Requests for proposal or invitations for bid issued by Contractor to implement this contract will provide notice to prospective bidders that City's conflict of interest provision is applicable in that contractors who develop or draft specifications, requirements, statements of work and/or RFP's for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement.

5. FUNDING.

- a) **Reprogramming of Funds.** It is understood and agreed that in the event the amount of funds City actually receives from the City mill levy is less than anticipated, City may decrease the total compensation and reimbursement to be paid hereunder.
- b) **Inability to Perform Contract.** It is further understood and agreed that in the event Contractor's rate of progress on this contract is leading to underspending due to inability to provide services at planned levels, City may decrease the total compensation and reimbursement to be paid hereunder or withdraw from the agreement.

- c) **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of any laws of the State of Kansas.
- d) **Non-Supplanting Existing Funds.** Contractor assures that grant funds made available under City mill levy grants and administered under this contract will not be used to supplant existing funds or other funding sources, but will be used to increase the amounts of those other funding sources.

6. RECORDS, REPORTS AND INSPECTION.

- a) **Documentation of Costs.** All costs incurred by Contractor for which Contractor purports to be entitled to reimbursement shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible to both parties to this agreement.
- b) **Maintenance of Records.** Except as otherwise authorized by City, Contractor shall retain such documentation for a period of three (3) years after receipt of the final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this three (3) year period.
- c) **Reports.** During the term of this contract, Contractor shall furnish to City, in such form, as City may require, such statements, records, reports, data and information as City requests pertaining to matters covered by this contract. Payments to Contractor will be withheld by City if Contractor fails to provide all required reports in a timely and accurate manner, until such time as all reports are furnished to City. Incomplete reports may be considered a breach of this contract.
- d) **Contractor's Purchasing Procedure.** Contractor certifies that it does not practice any form of discrimination based on race, ethnic origin, gender or religion or disability in its purchasing procedures. Contractor agrees to make available a written description of its purchasing procedures if requested by City.
- e) **Confidentiality.** Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of records.

7. METHOD OF BILLING AND PAYMENT.

- a) **Billing Procedures.** Contractor agrees that billings and payments under this contract shall be processed in accordance with established budgeting, purchasing and accounting procedures of City of Wichita, Kansas. Payment shall be made after receipt of billing, and the amount of payment shall not exceed the maximum amount allowed by this contract.

- b) **Support Documentation.** Billing shall be supported with documentation required by City including, but not necessarily limited to, that documentation described in this Appendix.
- c) **Reimbursement Restrictions.** Payments shall be made to Contractor only for items and services provided to support the contract purpose when such items and services are specifically authorized by this agreement. City reserves the right to disallow reimbursement for any item or service billed by Contractor if City believes that such item or service was not provided to support the contract purpose or was not authorized by the contract.
- d) **Pre-disbursement Requirements.** Contractor must provide to City the documentation required pursuant to this contract prior to any disbursements being made by City to Contractor.
- e) **Mailing Address.** Payments shall be mailed to Contractor's address as set forth herein.

8. LICENSES AND PERMITS.

Contractor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this contract. Contractor shall notify City immediately if any required license, permit, bond or insurance is canceled, suspended or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by City, in its discretion.

9. EPA APPROVED BUILDING.

Contractor will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the contract are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the contract is under consideration for such listing by the EPA.

10. HANDICAPPED ACCESSIBILITY.

Contractor will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons in employment services, participation and access to all programs receiving federal financial assistance. Contractor shall also comply with applicable requirements of the Americans With Disabilities Act (ADA) which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs.

11. ASSIGNMENT.

Neither this contract nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

12. MODIFICATION.

This agreement may not be modified except in writing signed by the parties hereto. To provide necessary flexibility for the most effective execution of this contract, whenever both City and Contractor mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

13. SUBCONTRACTING.

None of the work or services covered by this contract shall be subcontracted without the prior written approval of City. All approved subcontracts must conform to applicable requirements set forth in this contract and in its appendices, exhibits and amendments, if any.

14. COMPLIANCE WITH APPLICABLE LAWS.

- a) **Service Standards and Procedures.** Vendor shall perform the services set forth in this contract in compliance with applicable standards and procedures specified herein which cover the specific purpose, goals and objectives of this agreement.
- b) **Governing Law.** This contract shall be interpreted under and governed by the laws of the State of Kansas, without reference to its conflicts of law principles.
- c) **Compliance With Law.** Contractor shall comply with all applicable local, state and federal laws and regulations, in carrying out this contract, regardless of whether those legal requirements are specifically referenced in this agreement.
- d) **Access to Meetings.** Contractor agrees to grant access to City to meetings of its managing board or committee during that time when matters involving use of City grant funds are discussed, if requested by City.

15. DISCRIMINATION PROHIBITED.

Contractor shall comply with the City of Wichita's Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements as set forth in Schedule A.

16. INDEMNIFICATION AGREEMENT.

Both parties hereby expressly agree and covenant that they will hold and save harmless and indemnify the other party, its officers, agents, servants and employees from liability of any nature or kind connected with the work to be performed hereunder arising out of any negligent or willful act or omission of such party or of any employee or agent of that party to the degree such indemnification is allowed by law.

17. CONFIDENTIAL INFORMATION.

The parties agree that this Agreement and the relationship it represents requires the exchange of confidential information over the course of normal business. Confidential information is information not generally known by non-party personnel, including but not limited to, the financial, marketing, and other proprietary business information. Neither party shall use, duplicate or divulge to others any confidential information disclosed to that party by the other party in the course of performance of this Agreement without first obtaining written permission from that party, to the extent allowed by law.

18. PROPRIETARY INFORMATION; OWNERSHIP OF DATA.

Contractor agrees all data, records and information in whatever form, in the custody or control of the City to which the Contractor or its agents and employees obtain access, remains at all times exclusively the property of the City. Contractor agrees all such data, records and information constitutes at all times proprietary information of the City. Contractor agrees that it will not disclose, provide, or make available any of such proprietary information of in any form to any person or entity. Additionally, Contractor agrees it will not use any names or addresses contained in such data, records and information for the purpose of selling or offering for sale any property or service to any person or entity who resides at any address in such data. Additionally, Contractor agrees it will not sell, give or otherwise make available to any person or entity any names or addresses contained in or derived from such data, records and information for the purpose of allowing such person to sell or offer for sale any property or service to any person or entity named in such data. Upon termination of any agreement hereunder, Contractor agrees it will immediately cease use of and access to all City proprietary information. Contractor agrees it will take all reasonable steps and the same protective precautions to protect the City's proprietary information from disclosure to third parties as with Contractor's own proprietary and confidential information. Contractor agrees that this is a "work for hire" arrangement, and that all data, regardless of form, that is generated as a result of this Agreement is the exclusive property of City of Wichita, Kansas.

19. WARRANTIES AND REPRESENTATIONS.

Contractor warrants and represents that it will perform any and all services hereunder in a professional and workmanlike manner and that all such work shall be free of errors and defects. Contractor shall immediately correct any error or defect at no additional cost to City. This remedy is in addition to any other remedy which City may have pursuant to this Agreement or otherwise. This warranty is in addition to any warranty that may be implied or imposed by operation of law.

20. NO INFERENCES REGARDING DRAFTER.

The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual Agreement regarding the same. Because of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretation hereto, based upon the identify of the drafter shall be applicable in interpreting or enforcing this Agreement.

21. SAVINGS CLAUSE.

If any particular provision of the Agreement to which this Appendix is attached, or of this Appendix or of any other Appendix that is also attached to said Agreement, or a provision of any document that is referenced by said Agreement, shall be determined to be invalid or unenforceable, that determination shall not affect the other provisions which shall be construed in all respects as if the invalid or unenforceable provision were omitted.

SCHEDULE A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

SCHEDULE B

ADDITIONAL CONSULTING AGREEMENT TERMS

As of October 1, 2006, the City of Wichita ("Client") and Americh Massena & Associates, Inc., a registered investment adviser ("Americh"), entered into a contract for investment consulting services (the "Agreement"). This Addendum supplements the Agreement, for purposes of complying with the requirements of the Investment Advisers Act of 1940 and the Gramm-Leach-Bliley Act.

1. **Fiduciary Responsibility.** Consultant acknowledges and agrees that in providing services described in the Scope of Services, it is acting as a fiduciary in rendering advice to the Client based on the particular needs of the Client as stated herein.
2. **Legal Proceedings.** Consultant will have no obligation to render advice or take any action with respect to securities or other investments, or the issuers thereof, which become subject to any legal proceedings, including bankruptcies.
3. **Proxy Voting.** We do not exercise proxy voting authority over client securities. The obligation to vote client proxies at all time rests with you. However, you are not precluded from contacting us for advice or information about a particular proxy vote. However, we will not be deemed to have proxy-voting authority as a result of providing such advice to you.

Should we inadvertently receive proxy information for a security held in the Plan's account, we will immediately forward such information to you, but we will not take any further action with respect to the voting of such proxy. Upon termination of this Agreement, we will make a good faith and reasonable attempt to forward proxy information inadvertently received by us on your behalf to the forwarding address you provide to us.

4. **Risk.** You recognize that there may be loss or depreciation of the value of any investment due to the fluctuation of market values. You represent that no party to this Agreement has made any guarantee, either oral or written, that the Plan's investment objectives will be achieved. We will not be liable for any error in judgment and/or for any investment losses in the absence of malfeasance, negligence or violation of applicable law. Nothing in this Agreement will constitute a waiver or limitation of any rights, which you may have under applicable state or federal law, including without limitation state and federal securities laws.
5. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of you and us, and will not be construed as conferring any rights on any third party.
6. **Acknowledgment of Receipt of Part II Form ADV.** You acknowledge that you have received and had an opportunity to read our Part II of our Form ADV as required by Rule 204-3 of the Investment Advisers Act of 1940.
7. **Acknowledgment of Receipt of Privacy Notice.** You acknowledge that you have received and had an opportunity to read our privacy notice as required by SEC Regulation S-P.