

# THE CHARTER COUNTY OF WAYNE, MICHIGAN

## REQUEST FOR QUALIFICATIONS FOR COURT REPORTERS

**CONTROL NO. 37-10-028**

**Issue Date:** Friday, October 30, 2009

**Pre-Response Conference:** None

**Pre-Response Question Deadline:** Tuesday, November 10, 2009 at 4:00 p.m. local time

**Response Deadline:** **Friday, November 20, 2009 at 4:00 p.m. local time**  
Charter County of Wayne  
Purchasing Division  
600 Randolph, Room 146  
Detroit, Michigan 48226

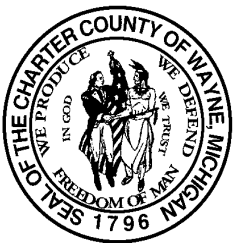
**Purchasing Contact:** Renee Marsh, CPPO, C.P.M.  
Department Executive--Procurement  
**Phone:** (313) 224-5151  
**Fax:** (313) 224-5182  
**Email:** [rmarsh@co.wayne.mi.us](mailto:rmarsh@co.wayne.mi.us)

**Description:** The County of Wayne is requesting responses to this Request for Qualifications (RFQ) for the purpose of contracting with a limited number of qualified vendors to provide court reporting services for Wayne County Corporation Counsel.

A copy of this RFQ can be obtained from the Wayne County website at <http://www.waynecounty.com/mygovt/mb/proposals/proposals.aspx>. Until the expiration date of this solicitation, it is incumbent upon the Respondent to check the website for additional information and/or addendums. RFQs can also be obtained from the Wayne County Purchasing Division, 600 Randolph Street - Room 146, Detroit, Michigan 48226-2831. If you have any questions, please call (313) 224-5151.

Written questions regarding the substance of the RFQ or scope of services must be submitted via e-mail to the purchasing contact listed above no later than the Pre-Response Question Deadline indicated above.

Sealed Responses are due prior to the Response Deadline indicated above and must be delivered to the Purchasing Division, located at 600 Randolph, Room 146, Detroit, Michigan 48226. Late responses will not be accepted – NO EXCEPTIONS.



**Robert A. Ficano**  
County Executive

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## SECTION 1 - INSTRUCTIONS

- 1) **COMMUNICATIONS:** In an effort to create a more competitive and unbiased procurement process, the County desires to establish a single point of contact throughout the procurement process. From the issue date of this RFQ, until a Successful Respondent(s) is selected, all requests for clarification or additional information regarding this RFQ or contacts with the County personnel concerning this RFQ or the evaluation process must be solely to the contact person listed on the cover page of this RFQ.

A violation of this provision is cause for the County to reject the Respondent's Response. If it is later discovered that a violation has occurred, the County may reject any Response or terminate any contract awarded pursuant to this RFQ. No contact regarding this document with other County employees is permitted.

- 2) **PRE-RESPONSE INFORMATION AND QUESTIONS:** Each response that is timely received will be evaluated on its merit and completeness of all requested information. In preparing responses, Respondents are advised to rely only upon the contents of this RFQ and accompanying documents and any written clarifications or addenda issued by the County. If a Respondent finds a discrepancy, error, or omission in the RFQ package, or requires any written addendum thereto, the Respondent is requested to notify the Purchasing contact noted on the cover of this RFQ, so that written clarification may be sent to all prospective Respondents. **THE COUNTY IS NOT RESPONSIBLE FOR ANY ORAL INSTRUCTIONS.** All questions must be submitted in writing to the Purchasing contact only before the Pre-Response Question Deadline indicated on the front of this document. No contact regarding this document with other County employees is permitted. All answers will be issued in the form of a written addendum.

- 3) **RFQ MODIFICATIONS:** Clarifications, modifications, or amendments may be made to the RFQ at any time prior to the Response Deadline at the discretion of the County. It is the Respondent's responsibility to periodically check the County's website until the posted Response Deadline to obtain any issued addenda.

- 4) **PRE-RESPONSE MEETING:** The date, time and location of the meeting, if any, is indicated on the cover page of this RFQ.

- 5) **RESPONSE SUBMISSION:** To be considered, the Response must be prepared in the manner and detail specified in this RFQ.

- a. Responses must be submitted to the Wayne County Purchasing Division, 600 Randolph, Room 146, Detroit, Michigan 48226, before the date and time indicated as the deadline. It is each Respondent's responsibility to insure that the Purchasing Division receives its Response prior to the deadline. This responsibility rests entirely with the Respondent, regardless of delays resulting from postal handling or for any other reasons. Responses will be accepted at any time during the normal course of business only, said hours being 8:00 a.m. to 4:00 p.m. local time, Monday through Friday, except for legal holidays.
- b. Responses received after the above deadline will not be accepted and will be returned to the Respondent unopened. The Purchasing Division's timestamp shall be the official time.
- c. The opening of a Response does not constitute the County's acceptance of the Respondent as a responsive and responsible Respondent.
- d. Responses must be enclosed in a sealed envelope, box, or package, and clearly marked on the outside with the following: Project name, Control Number, Deadline date and time, and Respondent's name, address, phone, fax, and contact name.
- e. Submission of a Response establishes a conclusive presumption that the Respondent is thoroughly familiar with the RFQ and specifications and terms of the Form of Contract, and the County's Procurement Ordinance and that the Respondent understands and agrees to abide by each and all of the stipulations and requirements contained therein.
- f. All prices and notations must be typed or printed in ink. No erasures are permitted. Mistakes may be crossed out and the person(s) signing the Response must initial corrections in ink.
- g. Responses sent by telegraph, facsimile, or other electronic means will not be considered.

- h. All costs incurred in the preparation and presentations of the Response, as well as any resulting contract, are the Respondent's sole responsibility; no such costs will be reimbursed to any Respondent. All documentation submitted with the Response will become the property of the County.
- i. Responses are subject to public disclosure after the deadline for opening in accordance with state law under the Freedom of Information Act (FOIA).

6) **PROPOSAL GUARANTEE:** Not Applicable.

7) **RESPONSE SIGNATURES:** An authorized official must sign the Responses. Each signature represents binding commitment upon the Respondent to provide the goods and/or services offered to the County if the Respondent is determined to be the most responsive and responsible Respondent.

8) **CONTRACT AWARD:** The County reserves the right to withdraw the RFQ, to award to one Respondent, to any combination of Respondents, by item, group of items, or total RFQ. The County may waive informalities if it is in the County's interest. The Respondent(s) to whom the award is made will be notified at the earliest possible date. Tentative acceptance of the Response, intent to recommend award of a contract, and actual award of the contract will be provided by written notice sent to the Respondent at the address designated in the Response. All Responses must be for a firm fixed price unless modified. If, for any reason, a contract is not executed with the selected Respondent within 14 days after notice of recommended award, then the County may recommend the next most responsive and responsible Respondent. Award of this RFQ is contingent upon the availability of funds for this project, within the sole discretion of the County. Acceptance of the Respondent's RFQ does not constitute a binding contract. There is no contract until the County's policies have been fulfilled. The County is not liable for performance costs until the successful Respondent has been given a fully executed contract. Failure to accept the terms and conditions of the County's Standard Contract may deem the Respondent non-responsive.

9) **RESPONSE MODIFICATIONS:** 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 Purchasing Director.

10) **DUPLICATE RESPONSES:** No more than one (1) Response from any Respondent, including its subsidiaries, affiliated companies and franchisees will be considered by the County. In the event multiple Responses are submitted in violation of this provision, the County will have the right to determine which Response will be considered, or at its sole option, reject all such multiple Responses.

11) **WITHDRAWAL:** Responses may only be withdrawn by written notice prior to the Deadline date set for the opening of Response. No Response may be withdrawn after the deadline for submission.

12) **REJECTION:** The County reserves the right to reject any or all Responses, or to accept or reject any Response in part, and to waive any minor informality or irregularity in Responses received, if it is determined by the Purchasing Director or designee that the best interest of the County will be served by doing so. The County may reject any Response from any person, firm or corporation in arrears or in default to the County on any contract, debt, or other obligation, or if the Respondent is debarred by the County from consideration for a contract award, or if Respondent has committed a violation of the ethics or anti-kickback provisions of the County's Procurement Ordinance which resulted in a termination of a contract or other material sanction within the two (2) years immediately preceding the date of issuance of this document.

13) **PROCUREMENT POLICY:** Procurement for the County will be handled in a manner providing fair opportunity to all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the County. The Chief Executive Officer has the vested authority to execute all County contracts, subject to Commission approval where required.

14) **COMPLIANCE WITH LAWS:** The Respondent must comply with all federal, state, and local laws and policies including, but not limited to:

- i. The provisions of the Wayne County Procurement Ordinance governing "Ethics in Public Contracting", as applicable to contractors, being Article 12 of Chapter 120, and Contractor agrees to provide all required disclosures;

- ii. The Michigan Civil Rights Act;
- iii. The Persons With Disabilities Act;
- iv. The Age Discrimination Act;
- v. Section 504 of the Rehabilitation Act;
- vi. The Living Wage Ordinance;
- vii. The Slavery Era Disclosure Ordinance;
- viii. The Fair Employment Practices of the Equal Contracting Opportunities Ordinances.

- 15) NON-DISCRIMINATION:** Wayne County will not contract with any person or firm that discriminates against employees or applicants for employment because of any factor not related to job performance. The Respondent must comply with all federal, state and local laws and policies that prohibit discrimination in employment contracts. The anti-discrimination policies of the Wayne County Procurement Ordinance, Article XI of Chapter 120 of the Wayne County Code, are incorporated into County contracts. The Respondent must include in its subcontracts provisions that prohibit subcontractors from discriminating in their employment practices.
- 16) NO RESPONSE:** Businesses who receive this RFQ but who do not submit a Response should return a notice stating the reason(s) for not responding. Failure to return this may result in removal of the business' name from all bidder lists.
- 17) CONTRACT NEGOTIATION:** 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 County may recommend the next most responsive and responsible Respondent. There is no contract until the County's policies have been fulfilled.
- 18) DISQUALIFICATION OF RESPONDENTS:** 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 either 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.
- 19) DISCUSSIONS:** Discussions may be conducted with responsible Respondents, in order to clarify and assure full understanding of, and conformance to, the solicitation requirements. Discussions may be conducted with Respondents who submit Responses determined to be reasonably susceptible of being elected for award, but Responses may be accepted without such discussions.

Respondents shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of Responses. Such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. If during discussions there is a need for any substantial clarification of or change in the RFP, the RFP shall be amended to incorporate such clarification or change. The Respondent shall reduce any substantial oral clarification of a Response to writing.

- 20) SUBCONTRACTORS:** In an effort to promote supplier diversity, Wayne County encourages Respondents to identify and include qualified disadvantaged businesses as subcontractors when proposing to provide products and services to the County.

If the Respondent's team is composed of a prime Consultant with Subcontractors, the Subcontractors must remain exclusive to the prime described in the Response until the end of the specific Response period and may not partner with more than one prime for the purposes of the responsive Response. The total exclusive time will be 120 days from the Response due date.

The Contract will not be assignable to any other business entity without the County's approval.

- 21) RESPONDENT RESPONSIBILITIES:** The Respondent must be capable, either as a firm or a team, of providing all services as described under SECTION 2 – SCOPE OF WORK and to maintain those capabilities until notification of the fact that their Response was unsuccessful. Exclusion of any service for this Response may serve as cause for

rejection. The selected Respondent must remain capable of providing all services as described under SECTION 2 – SCOPE OF WORK and must maintain those capabilities until the agreement is successfully finished. The successful Respondent will be responsible for all Services in this Response whether they are provided or performed by the Successful Respondent or Subcontractor(s). Further, the County will consider the Successful Respondent to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the cost of any contract. The Successful Respondent must identify all Subcontractors and the Services they provide. The Successful Respondent is responsible for all payments and liabilities of all Subcontractor(s).

The County reserves the right to approve or reject, in writing, any proposed Subcontractor. If the County rejects any proposed Subcontractor in writing, the Successful Respondent shall be responsible to assume the proposed Subcontractor's responsibilities. The Successful Respondent may propose another Subcontractor if it does not jeopardize the effectiveness or efficiency of the contract. Nothing contained in the Response or in the contract shall create or be construed as creating any contractual relationship between any Subcontractor and the County.

- 22) COUNTY PARTICIPATION:** The County will provide appropriate personnel support for implementation of these agreements. The Respondent's Response should identify County FTEs required and tasks to be performed by County personnel. For the purpose of contract administration, Wayne County will designate a person to serve as County Contract Manager. The County Contract Manager will serve as the primary liaison between the County and the Successful Respondent and will coordinate overall management and administration of the contract for the County.
- 23) 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 County and may be returned only at the County's option.

Respondents must make no other distribution of their Responses other than authorized by this RFQ. A Respondent who shares cost information contained in its Response with other County personnel or competing Respondent personnel 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.

## SECTION 2 - SPECIFICATIONS AND SCOPE OF WORK

- 1) **INTRODUCTION:** Through this Request for Qualifications (RFQ), the Charter County of Wayne (County) hereby invites businesses who meet the qualifications and specifications set forth herein to submit Responses for the purpose of contracting with a limited number of qualified vendors to provide court reporting services for Wayne County Corporation Counsel, the legal department for Wayne County.
- 2) **GENERAL INFORMATION:** In previous years, a large number of firms were prequalified and assigned work under various contracts. There is no record of historical use, but there is an estimated value of total work annually in the amount of \$48,000 that is expected to be split amongst the contracts to be awarded as a result of this RFQ..
- 3) **MINIMUM QUALIFICATIONS:** Respondents (specifically, the business that will be contractually bound under the contract with the County) will be deemed non-responsible and rejected without any further evaluation if they do not meet the following mandatory qualifications:
  - a) The Respondent must have had court reporting contracts with at least two separate governmental agencies.
  - b) Respondents must be independent of the County and of all County departments, divisions, and agencies.
- 4) **PREFERRED QUALIFICATIONS:** The Respondent may be evaluated higher if they meet the following qualifications:
  - a) Respondent or its key personnel should have at least five years experience performing similar work within Wayne County.
  - b) The Respondent should have had court reporting contracts with at least two separate governmental agencies.
- 5) **SCOPE OF SERVICES:** The successful Proposer (Contractor) shall provide court reporting services upon the request of the Department of Wayne County Corporation Counsel.
  - a) The Contractor shall:
    - Send only qualified court reporters with at least five years of experience, unless prior approval is obtained from the County.
    - Provide a 24 hour emergency number with a guaranteed call back within thirty (30) minutes by a company representative such as the actual court reporter or a dispatcher.
    - Have Court Reporters on call daily for last minute scheduling with as little as a one hour notice possible.
  - b) The Contractor shall provide ALL of the following services when requested:
    1. Reporting of depositions, court appearances, arbitrations, hearings, sworn statements, meetings, etc.
    2. Capture video digitally at proceedings. Full service in house video staff preferred.
    3. International Deposition Reporting.
    4. Condensed and word indexed transcripts.
    5. ASCII disks and rough uncertified disks.
    6. Realtime reporting (LiveNote & Summation)

7. Time-Stamped transcripts.
8. Video teleconferencing.
9. Remote Internet depositions.
10. Complimentary deposition rooms in Detroit, Oakland County, Ann Arbor, Grand Rapids, Mount Clemens, and other cities throughout Michigan.
11. Daily copy and rush delivery.
12. Electronic transcript delivery (via: e-mail or FTP)
13. Trial preparation consultants.
14. Imaging to CD ROMS.
15. Scanning Services.
16. Database management.
17. Video Service – conversion to CD ROM Disks or DVD
18. Delivery of video at conclusion of proceeding.
19. Videotape editing.
20. Courtroom playback.
21. Split screen deposition taping.
22. Video synchronization.
23. Transportation and equipment is the responsibility of the court reporting service.

**6) CONTRACT PRICES AND BILLING:** Each Respondent shall provide their billable rates for the items listed in the Price Sheet. The target rates paid has been provided for each in the column labeled “target rates”. The County reserves the right to negotiate any rates proposed. The County shall not pay for any mileage or travel time. The County will not pay for overtime, holidays, or other premium charges. The County will not accept charges for E-mail transcripts, ASCII Disks, or a mini copy.

Any costs or reimbursable expenses not enumerated on the price sheet shall be requested in writing in advance and shall be subject to the prior approval of the County.

Invoices must be detailed and indicate the hours billed and the hourly rate. Except as noted above, administrative, clerical, and secretarial, word processing and time accounting activities and office supplies are not reimbursable.

**7) CONTRACT TERM:** The contract is for a term of three (3) years. It is anticipated that this contract will commence on January 1, 2010. .

**8) CONTRACT AWARD AND WORK ASSIGNMENTS:** Award will be made to approximately three of the highest scoring Proposers. Work will be assigned on a rotating basis. If a Contractor is unable to accept an assignment, the next Contractor on the list will receive the assignment. Continuing failure to accept or fulfill assignments may result in cancellation of the contract. The estimated value of each contract award is \$50,000 over the three-year contract term. However the actual value is dependent upon frequency and extent of assignments, with no minimum or maximum guaranteed.

## SECTION 3 - EVALUATION CRITERIA AND SUBMITTAL REQUIREMENTS

1) **EVALUATION:** All Responses received will be evaluated by an Evaluation Committee comprising of County representatives. The following factors, listed in relative order of importance, will be considered in making the selection:

- Experience and Qualifications
- Servicing Capabilities
- Fee Schedule

a) Each Response submitted in response to this RFQ shall focus on the above criteria. The Evaluation Committee also may consider past performance of the Respondent on other contracts with the County or other entities. Responses will be evaluated equally and fairly; no preference will be given to any Respondent based solely on previous experience with the County or to an incumbent thereof. The County reserves the right to make additional inquiries and may request the submission of additional information.

b) **COUNTY-BASED ENTERPRISE (AND OTHER) ADVANTAGE PROGRAMS:** Wayne County administers a program that gives a pricing advantage to businesses located within Wayne County that are County-Based Enterprises (CBE). Additional advantage is also given if the business is located within the 10 Targeted Growth Communities within Wayne County (Detroit, Ecorse, Hamtramck, Highland Park, Inkster, Melvindale, River Rouge, Romulus, Sumpter Township, and Taylor). The County shall apply credit up to 5% to the pricing points for Responses submitted by certified County-Based Enterprises and 2% for TGCE. Wayne County also administers a Small Business program, an expanding business program, a Joint Venture program and a Mentor Venture program. To receive the applicable credit for any program, the Respondent and all first tier subcontractors must submit their certificates with the Response. (NOTE: Most federal and state funded projects will not include the application of geographic advantages such as the CBE and TGCE in accordance with funding requirements.) If you are not certified, contact the office of Human Relations at (313) 224-5021, or visit the County's website, [www.waynecounty.com](http://www.waynecounty.com).

### 2) GENERAL SUBMITTAL REQUIREMENTS:

a) **NUMBER OF COPIES:** One original, plus eight (8) copies for a total of nine (9) of the entire Response must be submitted to the Wayne County Purchasing Department. The original must be marked as an original. Each copy must be identical to the original. Responses are to be submitted in labeled 3-ring binders.

b) **RESPONSE FORMAT:** Each Response should be prepared simply and economically. Responses shall be in the same order as the requirements listed below and in the following section.

c) **RESPONSE CONTENT:** The Respondent must include the following items, or the Response may be deemed non-responsive and rejected without any further evaluation.

i) An Executive Summary of your Response (maximum 3 pages).

ii) All forms contained or listed in Section 5 in this RFP, fully completed:

iii) A copy of Respondent's latest audited, reviewed, or compiled financial statements (balance sheet, income statement, statement of cash flows, footnotes) prepared by an independent certified public accountant. If your company is not required by federal, state and local law, financial institutions, or company management to have audited, reviewed, or compiled financial statements prepared by an independent certified public accountant, you may submit an internally generated balance sheet and

income statement instead. The Respondent must include the following fully completed items or the Response may be deemed non-responsive and rejected without any further evaluation. Submit these in the following order:

- iv) Evidence showing that the Respondent meets each of the Minimum Qualifications listed in the Scope of Work of this RFQ. (See next section for more detail.)
- v) A complete response to each of the items in the next section, which are specific to the evaluation criteria. (See next section for more detail.)

**3) SUBMITTAL REQUIREMENTS SPECIFIC TO EVALUATION CRITERIA:** Submit a complete response to each of the following items. List them in the order below:

a) Experience and Qualifications:

- (1) Describe how you meet or exceed each of the minimum and preferred qualifications in this document in Section 2.
- (2) Describe the experience and qualifications of key personnel. Include detailed resumes that include any experience working with the Wayne County Court system.

b) Servicing Capabilities:

- (1) List all court reporters that will be available for this contract and their years of experience (all must have at least 5 years of experience).
- (2) Detail your emergency call in and dispatch procedure for during normal business hours and other hours. Also detail response times.
- (3) Provide an affirmative statement that the Respondent can perform ALL of the court reporting services described in Section 2 subsection 5 item b. Identify methods and procedures to be used to perform each.

c) Fee Schedule

- (1) Complete the enclosed price sheet. *(Note: Target rates, based on historic rates paid, are included on the Price Sheet to help you determine how to price the services.)*

d) Evaluation Credits:

- i) Provide a County Based Enterprise, Targeted Growth Community Enterprise, or other Wayne County Advantage program certificate (see item 1) b) on prior page) if you have one; otherwise it will not be considered during the evaluation.

**4) EXCEPTIONS:** Respondent shall clearly identify any proposed deviations from the language contained herein. Each exception must be clearly defined and referenced to the proper paragraph in this RFP. The exception shall include, at a minimum, the Respondent's proposed substitute language and opinion as to why the suggested substitution will provide equivalent or better service and performance. If no exceptions are noted in the Respondent's Response, the County will assume complete conformance with this specification and the successful Respondent will be required to perform accordingly. Responses not meeting all requirements may be rejected. Responses taking exception to any language in the Form of Contract may be rejected as nonresponsive.

- 5) **SHORTLISTING:** The County may shortlist the Respondents based upon responses to the above items. If necessary, the County will conduct interviews/demonstrations. The County will notify each Respondent on the shortlist, if such presentation is required. These presentations will provide an opportunity for the Respondents to respond to questions posed by the evaluation committee and to clarify their Responses through exhibition and discussion. The County will not reimburse oral presentation costs of any Respondent.

## **SECTION 4 – SAMPLE FORM OF CONTRACT**

### **COURT REPORTER CONTRACT**

**between**

**WAYNE COUNTY**

**and**

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APPENDIX A Request For Qualifications For Court Reporter Services Control No. 37-10-

APPENDIX B Contractor’s Response to Request For Qualifications

**THIS CONTRACT** is between the County of Wayne, Michigan, a body corporate and Charter county, acting through Department of Corporation Counsel (the "County") and \_\_\_\_\_ (the "Contractor").

**1. PURPOSE**

**1.01** The Contractor will provide Court Reporting Services for Wayne County Corporation Counsel.

**1.02** The Contractor is experienced and able to perform the court reporter services. The Contractor desires to provide these services to the County.

**2. ENGAGEMENT OF CONTRACTOR**

**2.01** The County 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.

**2.02** The Contractor agrees that it shall be placed on a list of qualified contractors, and the County shall contact the Contractor when its services are needed. The County does not guarantee that the Contractor's services will be used by the County; nor does the County guarantee that the Contractor's services will be used any minimum number of times. When assigning projects, the County will consider the distance and turn-around time of the Contractor and the number of projects already performed by the Contractor. Assignment of Contractors is within the discretion of the County.

**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 the County. 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 the County governs.

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

**3.04** All services are subject to review and approval of the County for completeness and fulfillment of the requirements of this Contract. Neither the County's 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 law for all damages to the County 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 is for a term of three (3) years. The Contract begins on \_\_\_\_\_.

**5. DATA TO BE FURNISHED CONTRACTOR**

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

**6. PERSONNEL**

**6.01** To induce the County 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 County approval in writing.

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

**7. ADMINISTRATION**

**7.01** The Contractor must inform the County 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 the County of its activities in connection with its duties and must keep the County 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, county charter, ordinance, resolution or executive order.

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

**8. COMPENSATION**

**8.01** The County agrees to pay the Contractor \_\_\_\_\_. The compensation includes all remuneration to which the Contractor may be entitled. The County will not pay the Contractor for overtime, holiday or other premium charges or other benefits.

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

**9. METHOD OF PAYMENT**

**9.01** The County 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 Contractor must sign the invoice and send it to the County 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, progress reports indicating the Contractor's activities for the period covered by that invoice 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** The County and the Legislator Auditor General 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 County and the Legislative Auditor General in any contract it has with a consultant or agent whose services will be charged directly or indirectly to the County. The County 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 the County 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 the County 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 the County.

**10.04** If, as a result of any audit conducted by or for a County, State of Michigan or Federal, agency relating to the Contractor's performance under this Contract, a discrepancy should arise as to the amount of compensation due the Contractor, the County 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, the County 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 the County 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 the County harmless from any claims, and any related costs or expenses.

**11.02** For all purposes, County employees will remain employees of the County and the Contractor's employees will remain employees of the Contractor. The Contractor is being retained by the County as an independent contractor to

provide services to the County, and is not being retained in any capacity as a joint enterprise or venturer with the County. The Contractor also covenants that none of its employees are or will be, during the period of this Contract, employees of the County.

**12. INSURANCE**

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

- A. Professional liability insurance with minimum limits of \$1 Million Dollars per occurrence and \$1 Million Dollars aggregate with a three (3) year tail.
- B. Workers' Compensation Insurance which meets Michigan statutory requirements.
- C. Comprehensive General Liability Insurance with minimum limits of bodily injury of \$500,000 per occurrence and \$1 Million Dollars aggregate with a three (3) year tail, and with minimum limits for property damage of \$500,000 each occurrence and \$1 Million Dollars aggregate.
- D. Comprehensive Automobile Liability (including hired and non owned vehicles) with minimum limits for bodily injury of \$1 Million Dollars per occurrence and with minimum limits for property damage of \$500,000 per occurrence.

**12.02** If, during the term of this Contract, changed conditions or other pertinent factors, should in the reasonable judgment of the County, render inadequate the insurance limits, the Contractor will furnish on demand such additional coverage as may reasonably be required and available under the circumstances. The insurance must be effected under valid and enforceable policies, issued by recognized, responsible Michigan insurers which are well-rated by national rating organizations.

**12.03** The Comprehensive General Liability and Comprehensive Automobile Liability Insurance policies must name the County 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 the County. 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** The Contractor agrees to save harmless the County 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 County 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 the County to safeguard the property and materials that the employees of the Contractor use in performing this Contract. The Contractor must hold the County 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** The Contractor cannot hold the County liable for any personal injury incurred by the employee(s), agents or consultants of the Contractor while working on this Contract which is not held in a court of competent jurisdiction to be directly attributable to the gross negligence of the County or any employee of the County acting within the scope of their employment. The Contractor agrees to hold the County harmless from any such claim by the Contractor's employees.

**13.04** For purposes of these provisions, the term "County" includes the County of Wayne 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 the County, 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 the County 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 the County 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 the County 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 the County 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 the County in arranging for the orderly transfer of responsibilities to persons or entities as the County 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 Bankruptcy Code.

**15. NOTICE OF MATERIAL CHANGES**

**15.01** The Contractor must immediately inform the County 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** The County 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 7 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, the County will pay the Contractor for the services rendered prior to termination, as soon as can be authorized. The County will compute the amount of the payment on the basis of the services rendered, and other means which, in the judgment of the County 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** After receipt of a Notice of Termination and except as otherwise directed by the County, 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 the County specifies.
- C. As of the date the termination is effective, present all Contract records and submit to the County the records, data, notes, reports, discs, and documents ("Records") as the County specifies, all pertinent keys to files, and carry out such directives as the County 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.

**16.03** 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 the County, 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. The County must return all the properties of the Contractor to it.

**16.04** Any intentional failure or delay by the Contractor to deliver the Records to the County will cause irreparable injury to the County not adequately compensable in damages and for which the County has no adequate remedy at law. The Contractor will pay the County \$500.00 per day as damages, and not as a penalty, until it delivers the Records to the County. The County 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. The County has unrestricted use of the Records for the purpose of completing the services.

**16.05** Access to the records prior to delivery must be restricted to authorized representatives of the County 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 the County. 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 the County, having been developed for the County for its own and sole use.

**16.06** 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 must comply with Article 12 of Chapter 120 of the Wayne County code governing "Ethics in Public Contracting."

**17.02** Contractor's material misrepresentation or delinquency in the disclosures required by section 120-225 of the Wayne County Code constitutes a material breach of this Contract, sufficient to warrant immediate termination and the imposition of liquidated damages (not a penalty) of fifteen percent (15%) of the consideration made or due under the Contract as of the date of termination.

**17.03** If the County determines that the Contractor has made a material misrepresentation or is willfully delinquent or knowingly evasive in the disclosures required by section 120-225, the Contractor and any other business which has substantially the same principal beneficiaries (as defined in section 120-238 of the Wayne County Code), may be debarred by the Purchasing Director, pursuant to Article 6 of Chapter 120 of the Wayne County Code, from competing for any further County contracts for up to three (3) years.

**17.04** If the contract price is in excess of \$20,000, or the terms thereof require the approval of the Wayne County Commission, and the Contractor knowingly collaborate in or induces a violation of any of the ethical standards that are set forth in sections 120-223, 120-224, 120-225, 120-228, 120-229, 120-231 or 120-233 of the Wayne County Code, the County has the right to impose any one or more of the following sanctions:

- A. Immediately terminate the Contract and require the Contractor to pay the County liquidated damages, and not a penalty of 15% of the total Contract compensation;
- B. Debar or suspend the Contractor from consideration from competing for further County contracts;  
or
- C. Recover the value transferred or received in breach of the ethical standards by a County employee or other person.

**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).
- F. Article XI of Chapter 120 of the Wayne County Code governing Equal Contracting Opportunity.
- G. Any other appropriate affirmative action provisions as may be required from time to time by the Director of Human Relations of the County. Contractor shall promptly give notice of any such provisions to County during the term of the Contract.

**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 status, handicap, sex or sexual orientation, religion, familial status, height or weight.
- B. 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 section 120-191 of the Wayne County Code, or 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 the County 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 by the Division of Human Relations 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.

**18.06** Contractor acknowledges the right of the Director of Human Relations to sue to enforce the provisions in this Article of the Contract.

**18.07** If the Contractor does not comply with the non-discrimination and affirmative action provisions of this Contract, the County may impose sanctions, as it determines to be appropriate, including but not limited to:

- A. the withholding of payments to the Contractor under this Contract until the Contractor attains compliance;
- B. cancellation, termination or rescission of this Contract, in whole or in part; and/or
- C. disqualification from bidding on future contracts for a period of no more than 3 years;
- D. referral to Corporation Counsel for consideration of injunction, liquidated damages or other remedies.

**18.08** If the Contract is funded, in whole or in part, by federal funds:

- A. Contractor's breach of the affirmative action commitments set forth in this Article constitutes a material breach of the Contract sufficient to warrant termination and the imposition of liquidated damages as set forth above, based upon the decision of the Director of Human Relations;
- B. Contractor must provide immediate notice to the County's Chief Executive Officer, the Director of Human Relations, and the Wayne County Commission when a subcontractor who was part of the Contractor's affirmative action commitment is terminated or substantially displaced by a subcontractor who does not qualify as a disadvantaged business enterprise, as that term is defined in section 120-251(21) of the Wayne County Code; and
- C. Contractor must establish and implement a good faith plan and goal to eliminate the continuing effects of past discrimination, which is determined by the Division of Human Relations to be appropriate for that purpose, provided the County has been authorized by the funding source to require such an affirmative action commitment from the Contractor.

**18.09** In the event that this Contract is or becomes subject to federal or state law which conflicts with the requirements of section Article XI of the Wayne County Code, the provisions of the federal or state law shall apply and the Contract shall be interpreted and enforced accordingly.

## **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:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

If to the County:

NAME  
Wayne County Corporation Counsel  
600 Randolph, Suite 253  
Detroit, MI 48226  
Phone: (313)  
Fax: (313)  
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 the County 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 the County discloses confidential information to the Contractor's employees pertaining to the County'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 County.

**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 laws and regulations.

**22.02** The Contractor must hold the County 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** County 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 County with a written proposal to County's 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 the County does not accept the Contractor's proposal, the County 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 County 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 the County shall act to waive, modify, change or alter the requirement that Contract Modifications must be in writing and signed by the County 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 the County.

**24. DEBARMENT AND SUSPENSION**

**24.01** The Contractor certifies to the best of its knowledge and belief, that:

- A. The Contractor 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 Contractor and its principals have not, within a three-year period preceding this contract, 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 Contractor 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 of the offenses enumerated in 24.01 b above; and;
- D. The Contractor and its principals have not, within a three-year period preceding this contract, had one or more public transactions (Federal, State or local) terminated for cause or default.

**24.02** The certification in this clause is a material representation of fact upon which reliance was placed. When the County determines that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the County, the County may terminate this Contract for cause or default.

**24.03** The Contractor shall provide immediate written notice to the County if, at any time, Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

**24.04** The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “Grantee”, “person”, “primary covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76.

**24.05** The Contractor agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the County.

**24.06** The Contractor further agrees that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction”, provided by the County, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**24.07** A Contractor may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Contractor may decide the method and frequency by which it determines the eligibility of its principals. Each Contractor may, but is not required to, check the Non-procurement List (of excluded parties).

**24.08** Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

**24.09** If a Contractor is in a covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the County, the County may terminate this transaction for cause or default.

## **25. PAYMENT OF LIVING WAGE**

**25.01** The Contractor must pay its work force a living Wage, as defined Section 120-65 of the Procurement Ordinance for the term of the Contract. The Contractor must post a notice of this requirement in its work place; which notice must state that if the Contractor has failed to comply with the requirements of this Article, an employee may file a notice of noncompliance upon the Compliance Manager. If an employee of the Contractor files a complaint with the Compliance Manager, the Compliance manager shall notify the Contractor to submit proof of compliance within 30 days. Failure of the Contractor to do so shall be grounds for termination of this Contract.

**25.02** If the Contractor does not comply with the Living Wage provisions of this Contract, the County may impose sanctions, as it determines to be appropriate, including but not limited to:

- A. Because of the impracticable ability and extreme difficulty of fixing and ascertaining the actual damages which the County would sustain, the imposition of liquidated damages (not a penalty) in the amount of \$50.00 per day, for each day that the Contractor shall fail to comply with said requirements;
- B. Termination of the Contract, if the Contractor failure to rectify the non-compliance within thirty (30) days from the date of notice of the determination of noncompliance;
- C. Requiring the Contractor to pay to the employee affected the amount of the deficiency, for each day the violation continues;
- D. Withholding of payments to the Contractor under this Contract in amounts necessary to effectuate the payments;
- E. Refusal to accept any bids or grant applications or requests for a period of five (5) years if the Contractor has failed on two (2) separate occasions to comply with this Article during the previous five (5) year period.

**25.03** If the auditor determines that the Contractor has violated the Living Wage Ordinance, the County may immediately terminate the Contract and debar the Contractor from bidding on or entering into any contract with the County or from receiving any financial assistance from the County for a period of five years.

**25.04** Upon execution of this Contract, the Contractor shall file with the County a signed affidavit stating that all employees working under the Contract meet the requirements of the ordinance and shall continue to meet the requirements of this ordinance for the life of the Contract. The affidavit must be signed by the business owner or another designated representative of the Contractor. The Contractor shall maintain payroll records for all employees and shall preserve them for a period of at least four (4) years. The Contractor shall permit access to job sites and relevant payroll records for authorized County representatives for the purpose of monitoring compliance, investigating employee complaints of non-compliance, and evaluating the operation and effects of the ordinance. In addition to any other sanctions set forth herein, a Contractor who fails to submit documents, declarations or information required to demonstrate compliance shall be deemed by the auditor to be noncompliant or non responsive and shall have Contract payments denied or suspended until compliance is demonstrated.

**26. PROMPT PAYMENT**

**26.01** If the Contractor should subcontract a part of the obligations under this Contract to a business which has been certified by the County=s Division of Human Relations as a small or disadvantaged business enterprise, the Contractor shall make prompt payments to each such subcontractor as the subcontract is performed which are at least equal to the prompt payments which are due to the Contractor under the provisions of this Contract. Unless alternate terms which have a similar purpose and effect are otherwise agreed upon in writing, the Contractor shall make payment within 45 days after delivery or satisfaction of the subcontract, or receipt of a complete invoice therefore, whichever is later. If an invoice is filled out incorrectly or contains a defect or impropriety, the Contractor shall notify the subcontractor of that fact within 10 days after receipt of the invoice. The 45 day period shall be extended by each day over 5 days which the subcontractor takes to make a correction. If a payment is past due, the Contractor shall pay to the subcontractor an additional amount to be calculated on a daily basis which is equal to an annual rate of interest of 9% (amount overdue X number of days overdue X .000246575). Interest shall not be due if payment is delayed because of a good faith disagreement between the Contractor and the subcontractor regarding contract performance and the dispute is resolved in favor of the Contractor. This provision is expressly intended to create a third-party right which is legally enforceable by a subcontractor. This provision does not, however, create a duty on the part of the County to seek enforcement of a default of this provision or to make payment to the subcontractor on behalf of the Contractor.

**27. SEVERABILITY OF PROVISIONS**

**27.01** 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.

**28. MERGER CLAUSE**

**28.01** 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.

**29. ASSIGNMENT**

**29.01** The Contractor must not assign this Contract, nor any part, or subcontract any of the work or services to be performed without the County's prior written approval.

**30. NONEXCLUSIVE CONTRACT**

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

**31. MISCELLANEOUS**

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

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

**31.03** 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.

**31.04** 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.

**31.05** 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, the County's reasonable determination is controlling.

**31.06** 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.

**31.07** 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.

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

**31.09** 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 the County, the County must promptly notify the Contractor. The Contractor must defend the claim in the name of the County, at the Contractor's expense. The Contractor must indemnify the County against any loss, cost, expense or liability arising out of the claim, whether or not the claim is successful.

**31.10** 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.

**32. AUTHORIZATION AND CAPABILITY**

**32.01** The Contractor warrants to the County 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.

**32.02** This Contract is effective only upon review and approval by the Wayne County Commission.

**33. SIGNATURE**

**33.01** The County and the Contractor, by their authorized officers and representatives have executed this Contract.

COUNTY OF WAYNE

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

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

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

ROBERT FICANO  
Its: COUNTY EXECUTIVE

APPROVED AS TO FORM

By: \_\_\_\_\_  
DEPT OF CORPORATION COUNSEL

252079

## SECTION 5 – REQUIRED FORMS

### FORMS INCLUDED IN THIS SOLICITATION DOCUMENT:

- (1) Response Form
- (2) Price Sheet

### FORMS THAT MUST BE DOWNLOADED FROM THE WAYNE COUNTY WEBSITE\*

*Failure to complete and submit these forms with your Response may result in it being deemed non-responsive and rejected without further evaluation.*

- (3) Business Information Questionnaire Form
- (4) Ethics in Contracting Vendor Form
- (5) W-9 Form (Standard IRS Form)
- (6) Living Wage Ordinance,
- (7) Slavery Era Disclosure Form,
- (8) Subcontractor Form,
- (9) Fair Employment Practices (FEP) Form or a current FEP certificate,  
(FEP is required for prime and subs)

\*Download solicitations, addenda and forms at: <http://www.waynecounty.com/mygovt/mb/purchasing.aspx>

## RESPONSE FORM

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

**TO: WAYNE COUNTY:**

The Undersigned hereby offers and agrees to furnish the goods and/or services in compliance with all terms, scope of work, conditions, specifications, and addenda in the Request for Qualifications.

**ADDENDA:**

The undersigned has read, understands and is fully cognizant of the Information to Respondents, Offer and Form of Contract, all Exhibits thereto, together with any written addendum issued in connection with any of the above. The undersigned hereby acknowledges receipt of the following addendum(s): \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (write "none" if none). In addition, the undersigned has completely and appropriately filled out all required forms.

**OBLIGATION:**

The undersigned, by submission of this Offer, hereby agrees to be obligated, if selected as the Contractor, to provide the stated goods and/or services to the County, for the term as stated herein, and to enter into a Contract with the County, in accordance with the Conditions, Scope and Terms, as well as the Form of Contract, together with any written addendum as specified above.

**COMPLIANCE:**

The undersigned hereby accepts all administrative requirements of the RFQ and will be in compliance with such requirements. By submitting this Response Form, the Respondent represents that: 1) the Respondent is in compliance with any applicable ethics or anti-kickback provisions of the County's Procurement Ordinance, and 2) if awarded a contract to operate the Concession or provide the Services required in the RFQ, the Respondent will comply with the ethics and anti-kickback provisions of the Procurement Ordinance.

**NONCOLLUSION:**

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

**PERFORMANCE GUARANTEE:**

The undersigned further agrees that if awarded the Agreement, it will submit to the County any required performance guarantee (i.e. irrevocable letter of credit or cash deposit).

**SUBMITTAL REQUIREMENTS:**

The undersigned certifies it has attached a complete response to each of the submittal requirements listed in the Evaluation Criteria and Submittal Requirements section of this RFQ.

**No Response 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

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

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

**For clarification of this offer, contact:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

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

Acknowledged before me by \_\_\_\_\_ (name) as \_\_\_\_\_ (title)  
of \_\_\_\_\_ (company) this \_\_\_\_ (day) of \_\_\_\_\_, 200\_\_.

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

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

Affix Seal

## PRICE SHEET

**Failure to complete the following form(s) shall result in your Response being deemed non-responsive and rejected without any further evaluation.**

The Respondent: proposes to provide services at the following rates:

	<b>Target Rate</b>	<b>Proposed Rate</b>
Labor Rate: regular business hours 8 a.m. – 5 p.m.	\$25.00/hour	\$_____/hour
Labor Rate: anytime before 8 a.m. & after 5 p.m., i.e.	\$40.00/hour	\$_____/hour
Labor Rate: weekends	\$40.00/hour	\$_____/hour
Cancellation Fee (at the location if the court reporter is present):	\$40.00/hour	\$_____/hour
Copy, should opposing, or other counsel schedule the deposition	\$2.00/page	\$_____/page
<u>Transcript Fee:</u>		
Next Day Delivery	\$6.00/page	\$_____/page
2 Day Delivery	\$5.00/page	\$_____/page
3 Day Delivery	\$4.50/page	\$_____/page
5 Day or greater	\$3.25/page	\$_____/page
(Normal transcript delivery: 5 – 7 business days)		
Exhibit copying charge	¢15/page	\$_____/page
Exhibit color copying charge	¢.50/page	\$_____/page
Delivery charge	\$2.50/each	\$_____/each
Board Meetings		
Transcript Fee	\$4.00/page	\$_____/page
Copies	\$3.00/page	\$_____/page
Video deposition rates for the first 2 hours	\$200/hour	\$_____/hour
Rate for each half hour thereafter	\$30/half hour	\$_____/½hour
(Original tape given to counsel at conclusion of proceeding)		
Sit fee for transcription of Audio tapes	No charge	\$_____/hour
Sit fee for transcription of Video tapes	\$25.00/hour	\$_____/hour
Transcription Fee of Audio and Video Tapes:		
1 to 2 day delivery	\$7.00/page	\$_____/page
3 to 5 day delivery	\$5.00/page	\$_____/page

1 week delivery	\$4.00/page	\$_____ /page
2 week delivery	\$3.00/page	\$_____ /page

OTHER: \_\_\_\_\_ \$ \_\_\_\_\_

OTHER: \_\_\_\_\_ \$ \_\_\_\_\_

OTHER: \_\_\_\_\_ \$ \_\_\_\_\_

OTHER: \_\_\_\_\_ \$ \_\_\_\_\_

*The County shall not pay for any mileage or travel time. The County will not pay for overtime, holidays, or other premium charges. The County will not accept charges for E-mail transcripts, ASCII Disks, or a mini copy. Except as noted above, administrative, clerical, and secretarial, word processing and time accounting activities and office supplies are not chargeable or reimbursable.*

**ADDITIONAL PRICE INFORMATION:**

**Terms:** Discount of \_\_\_\_\_% for payment of invoice within 30 days from date of delivery and acceptance of materials or services and vendor's invoice.

**County Based Enterprise (and Other) Certificates:** Attach Bidder's County Based Enterprise certificate and/or other program certificates if one exists; otherwise it will not be considered during price evaluation.