

Office of the Special Counsel
SERVICES AGREEMENT

CONTRACTOR: JOHN IRVING

This Services Agreement (the "Agreement") is made as of the latest date noted in the signature blocks below (the "Effective Date"), by and between the Office of the Special Counsel ("OSC"), an agency of the Wisconsin state government, and the independent contractor noted above (the "Contractor") (each of OSC and the Contractor may be referred to as a "party" and collectively, the "parties").

RECITALS:

R-1. The Contractor is engaged in the business of providing certain services.

R-2. The Contractor wishes to provide certain Specified Services (defined below) to OSC, and OSC wishes the Contractor to provide the Specified Services, upon the terms contained herein.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Contractor and OSC agree as follows:

1. Scope of Services.

A. Provision of Services. The Contractor will provide the services provided for in any mutually executed Statement of Work ("SOW") issued under this Agreement, subject to any terms and conditions set forth therein (such services hereinafter the "Specified Services"). The terms of this Agreement shall be deemed to be expressly included in and made a part of any SOW.

B. Acceptance of Services. The Contractor will perform the Specified Services in a professional, high quality manner consistent with industry standards, subject to any modifications or other standards (including standards for acceptance) set forth in an applicable SOW.

2. Fees.

A. Fee Schedule. Each SOW shall set forth the fees that the Contractor will charge for one or more Specified Services.

B. Payment of Fees.

(i) OSC will remit payment of any applicable retainer in accordance with the terms set forth in the SOW.

(ii) In addition, to the extent of any Specified Services that are not covered by the party's retainer arrangement in an applicable SOW, the Contractor will invoice OSC monthly in arrears, and OSC will pay the Contractor within thirty (30) days of receipt of the corresponding invoice when sufficient payment has been received for a matter covered by the SOW, or within 30 days of receiving payment, whichever is later. Invoices will include the Contractor's complete bill-to address, a description of the Specified Services completed, the price/fee for such Specified Services, any out-of-pocket costs, and any applicable tax.

3. Term and Termination.

A. Term. This Agreement takes effect on the Effective Date and shall continue in effect until terminated as specified below.

B. Termination For Breach. Either party may terminate an SOW or this Agreement upon written notice if the other party materially breaches any provisions of an SOW or this Agreement and fails to remedy that breach within ten (10) days after written notice of such breach.

C. For Convenience. Either party may terminate any SOW or this Agreement upon 30 days' advance written notice to the other party of termination under this provision.

D. Effect of Termination.

(i) Termination of this Agreement terminates all outstanding SOWs. Termination of one SOW does not terminate other SOWs.

(ii) In the event of termination, the Contractor may invoice OSC for any work-in-progress at a pro-rated price based upon the percentage of work completed prior to the date of termination. In the case of a retainer (and unless modified by an applicable SOW), the Contractor will reimburse to OSC any prepaid retainer amount based pro-rata on the period of such month occurring after the termination date of this Agreement or the SOW (as applicable). The Contractor will immediately send to OSC all work-in-progress that is the subject of such invoice to OSC in accordance with the terms of this Agreement.

(ii) Upon termination of this Agreement, and irrespective of the cause of termination, the Contractor will return to OSC all of OSC's Confidential Information (defined below) in its possession or, at OSC's election, destroy all or any portion of such Confidential Information as OSC may direct in writing. In the event such information is destroyed by the Contractor, the Contractor will provide OSC with written confirmation that the Confidential Information was destroyed, including a detailed list of the information that was destroyed, and the date(s) of destruction.

4. Relationship of Parties.

A. Independent Contractor. The parties are independent contractors of each other for all purposes, and neither is an employee of the other, as the terms "independent contractor" and "employee" are understood for purposes of applicable federal and state law. Contractor shall be solely responsible for Contractor's taxes, and OSC shall not withhold any FICA, FUTA, or other payroll taxes from payments to Contractor. Contractor acknowledges that it is ineligible for any benefits offered to employees of OSC, including any health, medical, unemployment, retirement, or workers' compensation benefits. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture among the parties, or to constitute any party as an agent of the other party. Contractor expressly agrees that **s/he** will not hold **her/himself** out as an employee or agent of OSC, or purport to act on behalf of OSC, to any person.

B. Nonexclusivity. Neither party is restricted from providing services to, or soliciting services from, or otherwise contracting with, the same or other clients or vendors of each other, so long as such engagements do not interfere with any obligations hereunder.

5. Confidentiality and Non-Disclosure.

A. Disclosure of Confidential Information. During the term hereof, either party (a "Disclosing Party") may disclose Confidential Information (defined below) to the other party (a "Receiving Party"). The Receiving Party will: (a) limit disclosure of any Confidential Information to its employees, contractors or

agents (collectively “Agents”) who have a need to know such Confidential Information in connection with the SOW or otherwise as the business context dictates; (b) advise its Agents of the proprietary nature of the Confidential Information and of the obligations set forth in this Agreement and require such Agents to keep the Confidential Information confidential; (c) keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own Confidential Information; and (d) not disclose any Confidential Information received by it to any third parties (except as otherwise provided for herein). Each Party shall be responsible for any breach of this Agreement by any of its Agents.

B. Use of Confidential Information. The Receiving Party agrees not to use the Confidential Information during the term hereof or thereafter for any purpose other than as authorized by this Agreement, without the prior written consent of the Disclosing Party.

C. Remedies. Both parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information and cause irreparable harm. In addition, the damages to the Disclosing Party that would result from the unauthorized dissemination of the Confidential Information would be difficult to calculate. Therefore, the Parties agree that the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. The Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

D. “Confidential Information.”

(i) For purposes of this Agreement, “Confidential Information” means any data or information that is proprietary to the Disclosing Party and not generally known to the public, whether in a tangible or an intangible form, whenever and however disclosed, including, but not limited to: (a) any marketing/fundraising strategies, donor lists, plans, financial information, projections, operations, revenue estimates, business plans and performance results relating to the past, present or future business or professional activities of such Party, its affiliates, subsidiaries and affiliated companies; (b) plans for events, products or services; (c) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; (d) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; and (e) any other information that should reasonably be recognized as confidential information of the Disclosing Party. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Party; that the Confidential Information has been developed and obtained through significant efforts by the Disclosing Party; and that Disclosing Party regards all of its Confidential Information as trade secrets.

(ii) Notwithstanding anything in the foregoing paragraph to the contrary, Confidential Information shall not include information which: (a) was known by the Receiving Party prior to receiving the Confidential Information from the Disclosing Party; (b) becomes rightfully known to the Receiving Party from a third-party source not known (after diligent inquiry) by the Receiving Party to be under an obligation to Disclosing Party to maintain confidentiality; (c) is or becomes publicly available through no fault of or failure to act by the Receiving Party in breach of this Agreement; (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation; or (e) is or has been independently developed by employees, consultants or agents of the Receiving Party without violation of the terms of this Agreement or reference or access to any Confidential Information.

6. Work Made For Hire/Assignment of Rights. Contractor and Contractor's employees and subcontractors acknowledge and agree that the Specified Services to be rendered by Contractor are being specially ordered and commissioned by OSC for use in connection with its governmental purpose and that any materials originated, prepared, suggested or devised by Contractor or Contractor's employees or subcontractors, including but not limited to all ideas, concepts, scripts, designs, logos, artistic and literary works and intellectual property created, developed, and/or designed by Contractor or Contractor's employees or subcontractors, either individually or in collaboration with others, and all elements thereof and any results and proceeds from those contributions (collectively, "Materials") that Contractor or Contractor's employees or subcontractors may furnish to OSC, and the copyright and all other proprietary right, title and interest in such Materials, shall be owned by OSC as the author of such Materials, which shall be considered "works made for hire" pursuant to the United States Copyright Act, 17 U.S.C. Section 101. If, for any reason, any of the Materials are held not to be a "work made for hire" as contemplated under the U.S. Copyright Act, then Contractor and Contractor's employees and subcontractors, by entering into this Agreement, irrevocably grant and assign, free and clear of any claims, all of Contractor's and Contractor's employees' and subcontractors' rights and interests in the Materials and its constituent parts to OSC, exclusively and perpetually, throughout the world, now or later known or devised. Contractor and Contractor's employees and subcontractors waive any so-called "moral rights" which may now or hereafter be recognized in connection with the Materials. Contractor and Contractor's employees and subcontractors agree that OSC shall have the exclusive right, but not the obligation, to file applications for copyright, trademark, patent, and other protections throughout the world to protect OSC's rights in the Materials and that Contractor and Contractor's employees and subcontractors shall, upon the request of OSC, perform such legal acts and execute and deliver to OSC any such documents, applications and assignments reasonably requested by OSC to secure, enforce and protect OSC's rights in the Materials. Contractor shall ensure that its employees and subcontractors subscribe to be bound by the provisions of this section in writing. Any breach of this provision by an employee or subcontractor of Contractor shall be deemed a breach by Contractor.

7. Indemnification. The Contractor shall indemnify, defend, and hold OSC harmless from and against any damage, loss, cost, or liability (including without limitation reasonable attorney's fees and court costs) arising out of or resulting from, directly or indirectly (I) the Contractor's willful misconduct, and (II) the Contractor's breach of any provision of this Agreement. The Contractor shall be considered a "Gableman Indemnified Party" within the meaning set forth in the contract between the Special Counsel and the Wisconsin Assembly.

8. Modification. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the parties hereto. No waiver by either party of any breach by the other party of any term or provision of this Agreement shall be deemed a waiver of any similar or dissimilar term or provision at the same or at any prior or subsequent time. All recitals are incorporated into the material terms of this Agreement and shall become a part hereof.

9. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and either party hereto may execute this Agreement by signing any such counterpart. A signed copy of this Agreement or any amendment hereto, or any other document related hereto transmitted via electronic mail, telecopier, or facsimile machine shall be deemed an executed original of such document for all purposes. No inference shall be drawn in favor of or against either party as a drafter of any provision of this Agreement, and this Agreement shall be considered drafted mutually by the

parties hereto.

10. Severability; Survival. If, in any jurisdiction, any term or provision hereof is determined to be invalid or unenforceable, (a) the remaining terms and provisions hereof shall be unimpaired, (b) any such invalidity or unenforceability in one jurisdiction shall not invalidate or render unenforceable such term or provision in any other jurisdiction, and (c) the invalid or unenforceable term or provision shall, for purposes

of such jurisdiction, be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the parties' intention as to the invalid or unenforceable term or provision. The parties' obligations in Sections 3.D, 5, 6, 7, and 12 hereof will survive any termination of this Agreement.

11. Assignment. This Agreement shall inure to the benefit of, and shall be enforceable by, the parties and their respective legal representatives, executors, administrators, heirs, distributees, devisees, legatees, successors, and permitted assigns. This Agreement may not be, nor may any right or interest hereunder be, assigned by either party without the prior written consent of the other party.

12. Governing Law; Prevailing Party Costs.

A. This Agreement is to be governed by and interpreted under the laws of Wisconsin without regard to its conflict of laws principles. The parties agree to submit to binding arbitration in Wisconsin with respect to any and all matters in dispute and in controversy between them concerning this Agreement, to be administered by the American Arbitration Association in accordance with its commercial arbitration rules.

B. Notwithstanding the foregoing, nothing in this Agreement shall be construed so as to prevent, delay, or preclude a party from seeking and obtaining injunctive relief from a court of competent jurisdiction pursuant to Section 5.C of this Agreement. For this purpose, the parties irrevocably submit to the jurisdiction of the courts of Wisconsin and the federal courts of the United States of America located in the Eastern District of Wisconsin with respect to the interpretation and enforcement of the provisions of this Agreement. The parties hereby mutually waive and agree not to assert, as a defense in any action, suit or proceeding for the interpretation and enforcement of this Agreement, that such action, suit or proceeding may not be brought or is not maintainable in such courts or that venue therein may be inconvenient or inappropriate or that this Agreement may not be enforced in or by such courts. The parties hereby consent to and grant any such court jurisdiction over their persons and over the subject matter of any such dispute.

The prevailing party in any dispute arising under or out of this Agreement shall be reimbursed and indemnified by the party not prevailing in such dispute for all costs and expenses reasonably incurred by the prevailing party in enforcing or establishing its rights hereunder, including

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AGREEMENT CONTINUES ON THE NEXT PAGE.

without limitation court costs, arbitration costs, and reasonable attorney's fees.

IN WITNESS WHEREOF, the Contractor and OSC have caused this Agreement to be signed as of the Effective Date.

CONTRACTOR

Name:

Date:

Address:

Email:

Signature:

OFFICE OF THE SPECIAL COUNSEL

Name: Michael Gableman

Date:

Address:

Email:

Signature: