

**MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM
SERVICES AGREEMENT**

This SERVICES AGREEMENT ("Agreement") is made this ____ day of _____, 2019 by and between the MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM ("MainePERS") and CONTRACTOR, INC. (the "Contractor").

NOW, THEREFORE, MainePERS and the Contractor hereby agree as follows:

Section 1 SERVICES OF THE CONTRACTOR

1.1 Scope of Services. The Contractor shall furnish services as set forth in MainePERS' Request for Proposal [_____] , and the Contractor's response thereto, which are incorporated herein by reference and portions of which are attached as Exhibits 1 and 2, respectfully. In the event of a conflict between the body of this Agreement and either of the exhibits, the body of this Agreement shall control. In the event of any conflict between Exhibits 1 and 2, Exhibit 1 shall control.

1.2 Compliance with Law. MainePERS' contracts for services are subject to statutory conditions related to non-discrimination in employment, 5 M.R.S. § 784. The Contractor has read and agrees to these conditions. In addition, the Contractor warrants and represents that it will comply with all governmental ordinances, codes, laws and regulations. This Agreement shall be governed in all respects by the laws, statutes and regulations of the United States of America and the State of Maine. Any judicial proceeding brought by one party against the other party shall be brought in the courts of the State of Maine.

1.3 Licenses, Permits, and Fees. The Contractor shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement.

1.4 Insurance. For the duration of the contract, the Contractor is required to procure and maintain a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in the State of Maine by the Maine Bureau of Insurance, which policy includes the activity to be covered by this Agreement with liability coverage of at least \$2,000,000 to protect the Contractor and MainePERS from suits, along with Workers' Compensation insurance as required by law. The Contractor shall provide MainePERS with proof of the insurance required by this subsection 1.4 upon execution of this Agreement and subsequently upon request.

Section 2 COMPENSATION

2.1 Contract Pricing. [To be negotiated]

2.2 Method of Payment. The Contractor shall submit an invoice by the end of each month. [Include additional provisions about invoicing as appropriate.] MainePERS shall pay non-disputed invoices within 30 days. Invoices and all other billing communications should be directed to: accounting@mainepers.org.

- 2.3 Independent Contractor. In the performance of this Agreement, the parties hereto agree that the Contractor, and any agents and employees of the Contractor, shall act in the capacity of an independent contractor and not as officers or employees or agents of MainePERS.

Section 3 COORDINATION OF WORK

- 3.1 Agreement Administrator. MainePERS will designate an Agreement Administrator to manage the contract for the term of this Agreement. MainePERS shall have the right to designate another Agreement Administrator upon written notice to the Contractor. All correspondence and related submission from the Contractor shall be submitted in writing to the Agreement Administrator.
- 3.2 Amendments. This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto, if such amendment or change is in written form and executed with the same formalities as this Agreement.
- 3.3 Assignment. The Contractor shall not assign or subcontract the whole or any part of this Agreement without the prior written consent of MainePERS, and any attempt to so assign or subcontract shall be invalid. No assignment shall relieve the Contractor of its obligations hereunder. This Agreement will be binding upon the Contractor's successors and permitted assignees.

Section 4 TERM

- 4.1 Term. Unless earlier terminated by MainePERS in accordance with subsection 4.2 below, the term for this Contract shall begin _____ and continue to _____. Upon termination subsections 5.2, 5.5, 5.6, and 5.7 below shall survive. Upon termination, the Contractor shall immediately return any information and other property received from or owned by MainePERS notwithstanding any claim the Contractor may have against MainePERS.
- 4.2 Termination. MainePERS may terminate this Agreement for any reason by giving the Contractor at least 30 days written notice of termination.

Section 5 MISCELLANEOUS PROVISIONS

- 5.1 Conflicts of Interest. The Contractor shall not engage any Trustee or employee of MainePERS in a position that would constitute a violation of 17 M.R.S. § 3104.
- 5.2 Confidential Information/Security. Confidentiality of MainePERS information is required. All materials, documents, and other information acquired by the Contractor from MainePERS or otherwise in connection with this Agreement shall constitute "Confidential Information." Except as required by law, the Contractor shall not disclose, release or communicate any confidential information to any third person without specific authorization by MainePERS.
- 5.2.1 The Contractor shall use confidential information only for purposes of providing services to MainePERS.
- 5.2.2 Upon request from MainePERS, the Contractor shall return or destroy any confidential information.

- 5.2.3 The Contractor agrees and acknowledges that irreparable damage could occur in the event of a breach of this subsection 5.2 by the Contractor. Accordingly, MainePERS shall be entitled to seek in any judicial proceeding the remedies of specific performance, injunctive relief or other equitable remedies, without posting bond or other security, in addition to any other remedy to which it may be entitled, at law or in equity.
- 5.3 Vendor Security Requirements. The Contractor will comply with MainePERS' Vendor Security Requirements, which are attached hereto as Exhibit 3 and incorporated herein by reference.
- 5.4 Solicitors. The Contractor warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, MainePERS shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- 5.5 Access to Records. The Contractor shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement for a period of seven (7) years following termination of this Agreement. The Contractor shall allow inspection of pertinent documents by MainePERS or its authorized representatives at the Contractor's office upon reasonable notice and shall furnish copies of the documents if requested.
- 5.6 MainePERS Held Harmless. The Contractor agrees to indemnify, defend, save and hold harmless MainePERS and its officers, trustees, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Contractor, its employees, agents, or subcontractors. This indemnification does not extend to a claim that results solely and directly from (i) MainePERS negligence or unlawful act, or (ii) action by the Contractor taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of MainePERS in accordance with this Agreement. Nothing in this Agreement shall be construed as a waiver of the privileges or immunities of MainePERS, its Board of Trustees, or its employees.
- 5.7 Notice of Claims. The Contractor shall give the Agreement Administrator immediate notice in writing of any legal action or suit filed related in any way to this Agreement or which may affect the performance of the Contractor under this Agreement.
- 5.8 Severability. The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

- 5.9 Force Majeure. The performance of an obligation by a party under this Agreement shall be excused in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. In the event of the Contractor's non-performance caused by any of the foregoing reasons, MainePERS may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.
- 5.10 Entire Agreement. This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

IN WITNESS WHEREOF, MainePERS and the Contractor, by their representatives duly authorized, have entered into this Agreement as of the date first written above.

Maine Public Employees Retirement
System

By: _____
Name: Sandra J. Matheson
Title: Executive Director

Inc.

By: _____
Name:
Title:

EXHIBIT 3
MainePERS Vendor Security Requirements

The Contractor shall cooperate with MainePERS in protecting the confidentiality, integrity, and availability of MainePERS' information and security of its assets by performing the following:

- Participating in a vendor due diligence process by providing information reasonably requested by MainePERS within 10 business days.
- The Contractor shall wear on their person an ID badge or wear a uniform containing the Contractor's business name while on MainePERS' property.
- The Contractor shall perform a criminal background check on all of its employees who perform work for MainePERS. The Contractor's employees performing work for MainePERS must not have been convicted of a felony or any crime involving theft. A list of employees authorized to work on MainePERS' property, and the results of their background checks shall be provided to MainePERS by the Contractor upon request. Property includes any MainePERS' assets or information.
- Unless specifically authorized by the Agreement Administrator, under no circumstance shall another person or persons accompany the Contractor or the Contractor's employees onto MainePERS' property while the Contractor is conducting work under this Agreement.
- **Other requirements to be identified based on particular RFP, Bidder, and proposal and subject to negotiation**