

CONTRACT

between

WAYNE COUNTY BUILDING AUTHORITY

and

PIERCE, MONROE & ASSOCIATES, LLC

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EXHIBIT A SCOPE OF SERVICES

EXHIBIT B Pierce, Monroe & Associates, LLC Billing Rates

THIS CONTRACT is between the Wayne County Building Authority (the "Authority"), organized and pursuant to P.A., Act 31 of Michigan Public Acts of 1948, whose address is 500 Griswold, 21st Floor, Detroit Michigan 48226 and Pierce, Monroe & Associates a Michigan limited liability company, whose address is 535 Griswold Street, Suite 2200, Detroit, Michigan 48226. (the "Contractor").

1. PURPOSE

1.01 The Contractor shall provide accounting and compliance services for the administration of the Authority's Consolidated Jail Project.

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

2. ENGAGEMENT OF CONTRACTOR

2.01 The Authority 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. The Contractor agrees and understands that the Authority is a blended component unit of the Charter County of Wayne ("County"). The Contractor agrees that any duties or responsibilities that the Contractor may owe to the Authority shall be considered a duty to the County.

3. SCOPE OF SERVICE

3.01 The Contractor must perform the services described in the Scope of Services which is identified and attached as Exhibit A of this Agreement. 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. The Parties agree that the Scope of Services will be modified as the project progresses. In furtherance of this understanding, the Parties agree that they shall re-vist the Scope of Services and related pricing within ninety (90) days after execution of this Agreement.

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 Authority governs.

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

3.04 All services are subject to review and approval of the Authority for completeness and fulfillment of the requirements of this Contract. Neither the Authority'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 Authority caused by the Contractor's negligent performance or nonperformance of any of the Services furnished under this Contract.

3.05 The Parties agree one of the primary responsibilities of the Contractor is to ensure that any and all requests for payments or invoices regarding the Consolidated Jail Project must comply with the American Recovery and Reinvestment Act "ARRA". The Contractor agrees that a material term of this Agreement is the Contractor's responsibility to ensure that no payment shall be made unless the Contractor has certified that such payment is in compliance with the ARRA.

4. TERM OF CONTRACT

4.01 This Contract begins on September 1, 2011 and ends January 1, 2015. The Contractor must expediently perform the services to achieve the objectives of this Contract. Upon written agreement, the parties may renew the contract for one year.

5. DATA TO BE FURNISHED CONTRACTOR

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

6. PERSONNEL

6.01 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 Authority, or its authorized representative or agent, shall have the right to examine, by any means and methods as the Authority or its authorized representatives may require, account managers assigned to the Authority, or proposed to be assigned to the Authority, by the Contractor for the purpose of

determining fitness and qualification. At any time during this Contract, any individual determined not to be acceptable to the Authority shall not be allowed to provide services to the Authority. The Authority shall be given notification of any changes in personnel employed by the Contractor during the term of this Contract. The Contractor agrees and understands that the Authority shall have the ability to accept or reject any of the proposed account managers assigned to this Contract.

6.03 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.

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

6.05 Whenever an employee assigned to this Contract must obtain prior Authority approval in writing.

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

6.07 Neither party will knowingly solicit or offer employment to any employee of the other party either during the duration of this Contract or for one year thereafter.

7. ADMINISTRATION

7.01 The Contractor must inform the Authority 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 Authority of its activities in connection with its duties

and must keep the Authority 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 power in the name of the Authority 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 Authority agrees to pay the Contractor at the rates in Exhibit B, the compensation includes all remuneration to which the Contractor may be entitled. The Authority will not pay the Contractor for overtime, holiday or other premium charges or other benefits in addition to those stated in Exhibit B. Maximum compensation shall not exceed \$900,000.

8.02 The Contractor must, upon reasonable notice, be available to participate in any proceeding, whether legal, administrative or otherwise, or in any internal Authority preparatory meetings for the proceeding, in order to assist the Authority in any matter relating to the purpose or outcome of this Contract.

9. METHOD OF PAYMENT

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

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

9.03 The Contractor must submit as part of the invoices, monthly progress reports indicating the Contractor's activities during the month and being signed by an authorized officer of the Contractor. The County agrees to pay the submitted invoices within thirty (30) days after approval.

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 3 years after the Contract's termination and completion.

10.02 The Authority has 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 Authority in any contract it has with a consultant or agent whose services will be charged directly or indirectly to the Authority. The Authority may delay payment to the Contractor pending the results of any such audit without penalty or interest. The Contractor agrees and understands that the Authority may delegate this duty to a third party vendor or to the Charter County of Wayne.

10.03 The Contractor agrees that representatives of the Authority are entitled to make periodic inspections to ascertain that the Contractor is properly performing the services indicated in Exhibit A. 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 Authority 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 Authority.

10.04 If, as a result of any audit conducted by or for the Authority, 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 Authority 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 Authority 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 Authority 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 Authority harmless from any claims, and any related costs or expenses.

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

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 Authority, 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 Authority 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 Authority. 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 Authority 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 Authority .

13.02 The Contractor agrees that it is its responsibility and not the responsibility of the Authority to safeguard the property and materials that the employees of the Contractor use in performing this Contract. The Contractor must hold the Authority 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 Authority 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 Authority or any employee of the Authority acting within the scope of their employment. The Contractor agrees to hold the Authority harmless from any such claim by the Contractor's employees.

13.04 For purposes of these provisions, the term "Authority" includes the Wayne County Building Authority and all other associated, affiliated, or subsidiary departments, divisions or agencies 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 Authority, 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 Authority 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 Authority of:
 - (i) adequate financial capacity to employ or contract with sufficient personnel to perform the services assigned to the Contractor as provided in Exhibit A, 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 Exhibit A; and
 - (iii) adequate financial and professional capacity to maintain the professional standard provided in this Contract. The reasonable determination of the Authority 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 Authority 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 Authority in arranging for the orderly transfer of responsibilities to persons or entities as the Authority 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 Authority 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 Authority 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 30 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 Authority will pay the Contractor for the services rendered prior to termination, as soon as can be authorized. The Authority will compute the amount of the payment on the basis of the services rendered, and other means which, in the judgment of the Authority 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 Authority, 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 Authority specifies.
- C. As of the date the termination is effective, present all Contract records and submit to the Authority the records, data, notes, reports, discs, and documents ("Records") as the Authority specifies, all pertinent keys to files, and carry out such directives as the Authority 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 Authority, 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 Authority 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 Authority will cause irreparable injury to the Authority not adequately compensable in damages and for which the Authority has no adequate remedy at law. The Contractor will pay the Authority \$500.00 per day as damages, and not as a penalty, until it delivers the records to the Authority. The Authority 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 Authority 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 Authority 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 Authority. 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 Authority, having been developed for the Authority 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 Authority 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 Authority contracts for up to three (3) years.

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.

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 Authority 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 Authority 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 Authority 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 Authority 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:

Pierce Monroe & Assoc
535 Griswold St Ste 2200,
Detroit, MI 48226
Attention: Phillip Pierce

If to the Authority:

Carla E. Sledge, Chief Financial Officer, or a written designee
500 Griswold, 31st Floor
Detroit, Michigan 48226

With a copy to:

Steven M. Collins, Assistant Chief Corporation Counsel
500 Griswold, 11th Floor
Detroit, Michigan 48226

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 Authority 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 Authority discloses confidential information to the Contractor's employees pertaining to the Authority'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 Authority.

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 Authority 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 Authority may request changes to the scope of Services to be furnished or performed by the Contractor 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, an adjustment may be made and the Contract modified in writing accordingly.

23.03 Contractor shall provide Authority with a written proposal to Authority'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 Authority does not accept the Contractor's proposal, the Authority 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. issues 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 Authority 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 Authority shall act to waive, modify, change or alter the requirement that Contract Modifications must be in writing and signed by the Authority 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 Authority.

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 Authority determines that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Authority, the Authority may terminate this Contract for cause or default.

24.03 The Contractor shall provide immediate written notice to the Authority 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 Authority.

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

25.04 Upon execution of this Contract, the Contractor shall file with the Authority 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 Authority 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 Authority 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, 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 Authority 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 Authority's prior written approval.

30. NONEXCLUSIVE CONTRACT

30.01 The Authority or the Contractor may contract with other firms providing the same or similar services so long as the Contractor's obligations to the Authority 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 Authority upon any contract, debt, or any other obligation to the Authority, 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 Authority'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 Authority, the Authority must promptly notify the Contractor. The Contractor must defend the claim in the name of the Authority, at the Contractor's expense. The Contractor must indemnify the Authority 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 Authority 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 identified in this Contract and its Exhibits. 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 Authority's Commission.

33. **SIGNATURE**

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

CONTRACTOR

By: 

Its: Managing Member

WAYNE COUNTY BUILDING AUTHORITY

By: 

NATHAN FORD

Its: CHAIRMAN

EXHIBIT A

SCOPE OF SERVICES

**WAYNE COUNTY BUILDING AUTHORITY
ACCOUNTING AND COMPLIANCE SERVICES FOR
CONSOLIDATED JAIL FACILITY
SCOPE OF SERVICES**

Exhibit A

The Wayne County Building Authority has requested Pierce, Monroe & Associates, LLC (PM&A) to provide accounting and compliance services for the administration of the Consolidated Jail facility. In response to the, request outlined below is PM&A's scope of services.

PM&A activities will be divided into three main categories during the project life cycle:

- **PROJECT START UP**

Project start up activities will include:

- Project planning and management
 - ✓ Meet with the Program Manager (PM), Construction Manager (CM) and the Owner's Representative to gain an understanding of project timelines and deliverables.
 - ✓ Validate our understanding of the policies and procedures for Wayne County related to Procurement, AP, AR, Fixed assets and other related areas
 - ✓ Gain an understanding of the policies and procedures related to PM, CM and the Owner's Representative.
 - ✓ Review the contracts for CM and related sub-contractors. (Davis Bacon act, Michigan prevailing wage, Buy American clause, etc)
 - ✓ Document a high level process flow for accounting and compliance services (e.g. invoice payment, change orders, budget adjustment, etc)
 - ✓ Prepare a project work plan
 - ✓ Prepare a detailed accounting matrix for construction/bond accounting.
 - ✓ Set-up the accounting structure within the JD Edwards system, (if necessary)
 - ✓ Work with PM and CM to develop a preliminary project budget and load budget in JD Edwards (if necessary)

- **RECURRING (MONTHLY/QUARTERLY/SEMIANNUALLY) ACTIVITIES**

Recurring activities will include:

- Monitor the monthly budget variances
- Work with PM and CM to develop the monthly forecast
- Manage monthly bond draws.
- Compute and obtain approval of the monthly bond draw
- Process the bond draw

**WAYNE COUNTY BUILDING AUTHORITY
ACCOUNTING AND COMPLIANCE SERVICES FOR
CONSOLIDATED JAIL FACILITY
SCOPE OF SERVICES**

Exhibit A

➤ **Invoice Validation and Payment Process**

Invoice validation will include:

- ✓ Review for allowability of invoiced cost (Only capital expenditures to acquire, construct or improve buildings, equipment and land)
- ✓ Review for contractual cost restrictions (e.g. management fees, overtime, etc)
- ✓ Review for compliance with the Davis Bacon Act (validation of prevailing wage and validate certified payroll)
- ✓ Validation of labor costs (job classification and labor rate)

➤ **Payment Processing**

- ✓ Prepare documentation for processing payments to the PM, CM and Owner's Representative.
- ✓ Process and disburse payments

➤ **Project Reporting**

- ✓ Prepare monthly project reports
 - Budget to actual variance reports
 - Compliance assurance reports
 - Financial statements
 - Other internal reports

➤ **Other Compliance testing**

- ✓ Compliance assurance related to timeliness of net sale proceeds spending /commitment. (5% within 6 months of bond issuance and 85% within 3 years)
- ✓ Compliance assurance related to costs incurred prior to bond issuance (costs paid subsequent to, or not more than 60 days prior to the date of "Declaration of Intent" adopted by the issuer)

• **PROJECT CLOSE ACTIVITIES**

Project close activities will include:

- Final invoice processing
- Retention release processing
- Transition of work papers and project related documents to Wayne County Building Authority project lead.
- Close out meetings

EXHIBIT B
Pierce, Monroe & Associates, LLC
Billing Rates

**WAYNE COUNTY BUILDING AUTHORITY
ACCOUNTING AND COMPLIANCE SERVICES FOR
CONSOLIDATED JAIL FACILITY**

Exhibit B

PM&A Billing Rates

Staffing Level	Hourly Rate
Managing Member/ Quality Control Executive	\$175
Senior Manager/Project Executive	\$150
Senior Associate/Compliance Coordinator	\$110

Estimated Project Hours

Hours				
Activities	Quality Control Executive	Project Executive	Compliance Coordinator	Total
Project Start up	100	432	648	1180
Recurring activities	180	985	5013	6178
Project Close Activities		40	88	128
Total Hours	280	1457	5749	7486