

AUG 25 2006

SERVICES AGREEMENT
by and between:
SEDGWICK COUNTY, KANSAS

and
ARNERICH MASSENA & ASSOCIATES, INC.

THIS AGREEMENT made and entered into this 22 day of August, 2006, by and between Sedgwick County, Kansas, (hereinafter referred to as "County"), and Arnerich Massena & Associates, Inc., a corporation organized in the State of Oregon, and authorized to conduct business in the State of Kansas (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, pursuant to a request by County (RFP 06-0015), Contractor has submitted a proposal to provide consulting services relating to 457 deferred compensation plans, as needed by County; and

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

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

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

1. **Purpose.** Contractor will provide the professional 457 deferred compensation plan consulting services as outlined in Contractor's response to County's RFP 06-0015, dated May 12, 2006, and incorporated herein by reference. The services to be performed pursuant to this Agreement shall follow the provisions set forth in said response, and shall hereafter be referred to as "Services." Contractor will participate in the development of a request for proposal process, which will result in County selecting a plan administrator, and shall be part of a committee comprised of County staff during the evaluation process of proposal responses, and making recommendation for award, with the goal of having a plan administrator in place by May 1, 2007. Services will include:

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

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

2. **Term.** The term of this contract commences upon approval of this contract by both parties, and terminates upon full completion of the services outlined in Contractor's response to County's RFP 06-0015, dated May 12, 2006. Contractor shall be compensated for services contemplated by this contract that are performed by Contractor prior to the execution of this Agreement.

3. **Compensation.** The amount to be paid to Contractor by County as compensation for performance of Services is the flat fee of **Fifty Thousand Dollars (\$50,000.00)**, to be paid to Contractor as shown in the table below. This fee includes all of Contractor's time, labor, equipment, expenses, and all other expenses associated with the provision of Services, and shall be the sole compensation rendered to Contractor hereunder. Contractor shall invoice County upon reaching the payment milestones in the table shown below. Invoices shall be submitted directly to the Sedgwick County Department of Finance, 525 N. Main, Suite 823, Wichita, Kansas 67203, or to such address as County may identify to Contractor. All invoices shall show the contract number and federal employer identification number. Each invoice submitted by Contractor shall be paid by County within thirty (30) days.

Services Provided	Compensation	Payment Milestone
Consult with Sedgwick County staff with regard to needs and objectives.	\$10,000	Upon execution of this Agreement.
Develop the selection criteria and requirements to be used to issue a request for proposal (RFP) to select a plan administrator that will offer the best benefit to County employees.	\$15,000	Upon issuance of an RFP for plan administrator.
Participate in the evaluation process of proposal responses received, including any interviews and final recommendation for award; participate in contract negotiation with selected provider(s); and assist in the implementation of any Plan changes and/or conversions.	\$25,000	Upon final recommendation for award.

4. **Guarantee.** Contractor guarantees that if, for any reason, the successful candidate leaves employment with Sedgwick County within one year of his or her start date, it will conduct another search to replace that individual at the cost of expenses only.

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

County: Sedgwick County Human Resources

Attn: Contract Notification
510 N. Main, Suite 306
Wichita, KS 67203

and

Sedgwick County Counselor's Office
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203-3790

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

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

7. **Incorporation of Appendices.** (a) Appendix A (General Contract Provisions); and (b) Contractor's response to County's RFP 06-0015, dated May 12, 2006, are attached hereto and made a part hereof as if fully set out herein.

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

9. **Order of Precedence.** In the event of conflict between the terms of the any of the contract documents, the order of precedence shall be: (a) this Agreement; (b) Appendix A; and (c) Contractor's response to County's RFP 06-0015, dated May 12, 2006.

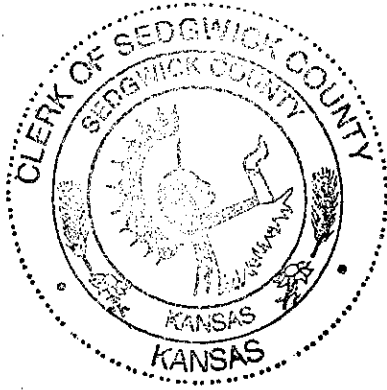
10. **Authority.** Each person executing this Agreement represents and warrants that he or she is duly authorized to do so on behalf of the entity that is a party hereto.

Witness our signatures the day and year first above written.

ARNERICH MASSENA & ASSOCIATES, INC. SEDGWICK COUNTY, KANSAS:

By: *M Lynn Spruiell*
Name: M. Lynn Spruiell
Title: COO

By: *Iris Baker*
IRIS BAKER, Purchasing Director*



ATTEST:

Don Brace
DON BRACE, County Clerk

APPROVED AS TO FORM:

Aaron T. Blase 8/23/04
AARON T. BLASE
Assistant County Counselor
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*Purchase approved by Board of Bids and Contracts per Charter Resolution No. 57

APPENDIX A GENERAL CONTRACT PROVISIONS

1. AUTHORITY TO CONTRACT.

- a. **Affirmation of Legal Authority.** Contractor assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the signing of this contract, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Contractor to act in connection with the application and to provide such additional information as may be required.
- b. **Required Documentation.** Domestic (Kansas) corporations shall 1) furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. Foreign (non-Kansas) corporations shall furnish evidence of authority to transact business in Kansas, in the form of a Certificate signed by the Kansas Secretary of State; and 2) a copy of the Corporation Resolution evidencing the authority to sign the Contract Documents, executed by the Corporation's Secretary or Assistant Secretary.

2. INDEPENDENT CONTRACTOR RELATIONSHIP.

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

3. PERSONNEL.

- a. **Qualified Personnel.** Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any other contractual relationship with County. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this contract.
- b. **Minimum Wages.** Contractor will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.
- c. **Employee Conflict of Interest.** Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- d. **Contractor's Safeguard.** The parties to this agreement recognize that entities or persons providing government-funded services to the public are the subject of public scrutiny. Consequently, by entering into this agreement Contractor assumes an affirmative and ongoing duty during the pendency of this contract to maintain compliance with requirements set forth in Section 4 below.

4. **PROHIBITION OF CONFLICTS OF INTEREST.**

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

5. **FUNDING.**

- a. **Reprogramming of Funds.** It is understood and agreed that in the event the amount of funds County actually receives from the County mill levy is less than anticipated, County may decrease the total compensation and reimbursement to be paid hereunder.
- b. **Inability to Perform Contract.** It is further understood and agreed that in the event Contractor's rate of progress on this contract is leading to underspending due to inability to provide services at planned levels, County may decrease the total compensation and reimbursement to be paid hereunder or withdraw from the agreement.
- c. **Cash Basis and Budget Laws.** The right of the County to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of any laws of the State of Kansas.
- d. **Non-Supplanting Existing Funds.** Contractor assures that grant funds made available under County mill levy grants and administered under this contract will not be used to supplant existing funds or other funding sources, but will be used to increase the amounts of those other funding sources

6. **RECORDS, REPORTS AND INSPECTION.**

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

7. **METHOD OF BILLING AND PAYMENT.**

- a. **Billing Procedures.** Contractor agrees that billings and payments under this contract shall be processed in accordance with established budgeting, purchasing and accounting procedures of Sedgwick County, Kansas. Payment shall be made after receipt of billing, and the amount of payment shall not exceed the maximum amount allowed by this contract.
- b. **Support Documentation.** Billing shall be supported with documentation required by County including, but not necessarily limited to, that documentation described in this Appendix.
- c. **Reimbursement Restrictions.** Payments shall be made to Contractor only for items and services provided to support the contract purpose when such items and services are specifically authorized by this agreement. County reserves the right to disallow reimbursement for any item or service billed by Contractor if County believes that such item or service was not provided to support the contract purpose or was not authorized by the contract.
- d. **Pre-disbursement Requirements.** Contractor must provide to County the documentation required pursuant to this contract prior to any disbursements being made by County to Contractor.
- e. **Mailing Address.** Payments shall be mailed to Contractor's address as set forth herein.

8. LICENSES AND PERMITS.

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

9. EPA APPROVED BUILDING.

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

10. HANDICAPPED ACCESSIBILITY.

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

11. ASSIGNMENT.

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

12. MODIFICATION.

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

13. SUBCONTRACTING.

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

14. COMPLIANCE WITH APPLICABLE LAWS.

- a. **Service Standards and Procedures.** Vendor shall perform the services set forth in this contract in compliance with applicable standards and procedures specified herein which cover the specific purpose, goals and objectives of this agreement.
- b. **Governing Law.** This contract shall be interpreted under and governed by the laws of the State of Kansas, without reference to its conflicts of law principles.
- c. **Compliance With Law.** Contractor shall comply with all applicable local, state and federal laws and regulations, in carrying out this contract, regardless of whether those legal requirements are specifically referenced in this agreement.

- d. **Access to Meetings.** Contractor agrees to grant access to County to meetings of its managing board or committee during that time when matters involving use of County grant funds are discussed, if requested by County.

15. **DISCRIMINATION PROHIBITED**

- a. Pursuant to the provisions of K.S.A. 44-1030, which states that every contract for or on behalf of County or any agency of or authority created by County, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain such provisions, Contractor agrees to the following:

- (1) Contractor shall observe the provisions of the Kansas Act Against Discrimination, and the Kansas Age Discrimination in Employment Act, and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, ancestry, or age.
- (2) In all solicitations or advertisements for employees, Contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.
- (3) If Contractor fails to comply the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by County.
- (4) If Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by County.
- (5) Contractor shall include the provisions of paragraphs (1) through (4) inclusively of this subsection in every subcontract or purchase order made pursuant to this Agreement, so that such provisions will be binding upon such subcontractor or vendor.
- (6) The provisions of this section shall not apply to a contract entered into by a contractor who: 1) employs fewer than four employees during the term of this contract; or 2) whose contracts with the County cumulatively total \$5,000.00 or less during the fiscal year of the County pursuant to K.S.A. 44-1031(c).

- b. Contractor shall comport its performance under this contract with all pertinent provisions set out in all applicable Federal and State anti-discrimination acts and associated regulations, all as amended, including, but not limited to:

- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*, and 45 C.F.R. Part 80);
- (2) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*, and 29 C.F.R. Parts 1602, 1604, 1605, &1606);
- (3) The Age Discrimination in Employment Act (29 U.S.C. 621 *et seq.*, and 29 C.F.R. Part 1625);

- (4) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*, and 45 C.F.R. Parts 90 & 91);
- (5) The Americans with Disabilities Act ("ADA") (42 U.S.C. 12101 *et seq.*, 28 C.F.R. Parts 35 & 36, and 29 C.F.R. 1602, 1627, & 1630);
- (6) The Rehabilitation Act of 1973 (29 U.S.C. 794 *et seq.*, and 45 C.F.R. Parts 84 & 85);
- (7) The Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*, and K.A.R. Articles 21-30 through 21-34, 21-50, & 21-70); and
- (8) The Kansas Discrimination in Employment Act (K.S.A. 44-1110 *et seq.*), including the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*, and K.A.R. Article 21-80).

- c. Contractor shall be deemed in default of this contract and it may be immediately canceled, terminated, or suspended, in whole or in part, by County if Contractor violates the applicable provisions of any of the Federal or State anti-discrimination acts identified in this section..

16. INDEMNIFICATION AGREEMENT.

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

17. CONFIDENTIAL INFORMATION.

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

18. PROPRIETARY INFORMATION; OWNERSHIP OF DATA.

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

that all data, regardless of form, that is generated as a result of this Agreement is the exclusive property of Sedgwick County, Kansas.

19. WARRANTIES AND REPRESENTATIONS.

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

20. NO INFERENCES REGARDING DRAFTER.

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

21. SAVINGS CLAUSE.

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