FILED
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CLERK OF SUPREME COURT
OF WISCONSIN

Service Contract

The Supreme Court of Wisconsin, represented by the Director of State Courts ("Director") pursuant to Wis. Stat. § 16.74(1), and the individual identified below, ("Contractor") agree as follows:

The Supreme Court of Wisconsin ("Court"), pursuant to the Court's December 22, 2023 Order regarding post-decision matters in *Clarke v. Wisconsin Elections Commission*, No. 2023AP1399-OA ("12-22-2023 Court Order Re Post-Decision Matters"), appointed the team of Dr. Bernard Grofman and Dr. Jonathan Cervas to serve as the Court's consultants in that matter;

The Court, pursuant to the 12-22-2023 Court Order Re Post-Decision Matters, has instructed the Director to enter into one or more retainer agreements between the Court and Dr. Bernard Grofman and Dr. Jonathan Cervas for their services as the Court's consultants;

Contractor Dr. Bernard Grofman accepts the role as the Court's consultant;

The conditions described in this Contract represent the parties' full and mutual agreement.

Contract Name: Court Consultant Services

Contractor's Name **Dr. Bernard Grofman**	Federal ID or Social Security Number [redacted]		
Contractor's Address	City	State	Zip Code
School of Social Sciences UCI	Irvine	CA	92697

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Contract with full knowledge of and agreement with the terms and conditions of this Contract.

By: Bernard Grofman

Dr. Bernard Grofman

Date: December 30, 2023

By: [signature]

Audrey K. Skwierawski
Director of State Courts

Date: 1/3/24

I. Scope of Services

Contractor agrees to provide consulting services for the Court in accordance with the provisions of the 12-22-2023 Court Order Re Post-Decision Matters. Contractor shall provide the services according to reasonable professional standards.

II. Term

This Contract shall be effective December 22, 2023. The term shall end at the issuance of a final decision of the Court in the matter of *Clarke v. Wisconsin Elections Commission*, No. 2023AP1399-OA.

III. Payment

A. The cost for Contractor's services provided pursuant to Section I of this Contract is a rate of $450/hour. Costs and expenses incurred by Contractor pursuant to this Contract shall be paid in accordance with the 12-22-2023 Court Order Re Post-Decision Matters. Costs and expenses shall not exceed Contractor's actual costs and expenses. In addition, mileage, travel expenses, and costs for meals shall not exceed the maximum rates authorized for and paid to State employees under Wisconsin law. Costs and expenses not payable include any work performed prior to the effective date of this Contract, preparing invoices, performing non-consultant or clerical work, negotiating amendments to this Contract, and communication related to billing or payment under this Contract.

B. Contractor shall provide to the Court an accounting of Contractor's costs and expenses incurred under this Contract within 10 days of Contractor filing of it's written report pursuant to the 12-22-2023 Court Order Re Post-Decision Matters. If additional costs and expenses are incurred, Contractor shall submit to the Court an additional accounting within 10 days of the date the additional cost or expense is incurred. Accountings shall at a minimum denote the nature of costs and expenses incurred, the individual who performed the work, the services performed, the hours expended, rate per hour, and date performed.

C. The maximum amount payable to the Contractor under this Contract, which includes costs and expenses, shall not exceed $100,000. The Director, however, will agree to reasonable amendment to this Contract to modify the maximum amount payable if the matter requires additional resources.

IV. Termination of Contract

Both the Director and the Contractor may terminate this Contract by giving written notice. Upon termination of this Contract, the Contractor shall be paid only for costs of services actually performed by the Contractor through the effective date of termination, along with reasonable and necessary expenses actually incurred by the Contractor through that date.

V. Work Product Ownership

All material produced or obtained by the Contractor under this Contract shall remain the property of the Court and shall not be used for any other purpose without the prior written approval of the Court. Contractor may use publically available maps, documents, and data for Contractor's own subsequent research use as academic scholars.

VI. Standard Terms and Conditions

A. Applicable Law. This Contract shall be governed by the laws of the State of Wisconsin. Contractor agrees that any litigation commenced by the Contractor or the Director for matters arising out of this Contract, will have venue in Dane County, Wisconsin, unless otherwise specifically agreed between the parties of this Contract.

B. Breach Not Waiver. A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or default other than the event or default specified in such waiver. A waiver of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The making of any payment to the Contractor under this Contract shall not constitute a waiver of default, evidence of proper Contractor performance, or acceptance of any defective item or work furnished by the Contractor.

C. Cancellation. The Director reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the Contractor to comply with terms, conditions, and specifications of this Contract.

D. Contractor Compliance and Responsibility for Actions. Contract shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which are in effect during the term of this Contract which may affect the Contractor's work or obligations hereunder.

The Contractor shall be solely responsible for its actions and those of its agents, employees, or subcontractors. Neither Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State of Wisconsin, the Court, or the Director.

E. Delay and Remedy. If the Contractor fails to remedy any delay or other problem in its performance of its Contract obligations after receiving reasonable notice from the Director to do so, the Contractor shall reimburse all reasonable costs incurred as a direct consequence of the Contractor's delay, action, or inaction. In case of failure to deliver deliverables or services in accordance with this Contract, the Director, upon written notice to the Contractor and upon further order from the Court, may procure such deliverables or services from other sources as necessary, and the Contractor shall be responsible for the additional cost, including the cost of re-procurement,

purchase price, and administrative fees. This remedy shall be in addition to any other legal remedies available to the Director.

F. Disclosure of Independence and Relationship.

1. Contractor shall certify in writing to the Director that no relationship exists between the Contractor and the Court or the Director that interferes with fair competition or is a conflict of interest, and no relationship exists between the Contractor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Court may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interests of the Court or the Director.

2. Contractor agrees as part of the Contract for services that during performance of the Contract, the Contractor will neither provide contractual services nor enter into any other agreement to provide services to a person or organization that is regulated or funded by the Court or the Director, or has interests that are adverse to the Court or the Director. The Court may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interests of the Court or the Director.

3. If a state public official, Wis. Stat. § 19.42, a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this Contract, and if this Contract involves payment of more than three thousand dollars ($3,000) within a twelve (12) month period, this Contract is voidable by the state unless appropriate disclosure is made according to Wis. Stat. § 19.45(6), before signing the Contract. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

G. Employment. Contractor shall not engage the services of current state employees, including employees of any department, commission, or board, without both the employing agency's and the Director's written consent.

H. Entire Agreement. This Contract and the following documents are incorporated by reference into the Contract, and together constitute the entire agreement of the parties and supersedes all prior communications, representations, or agreements between the parties, whether oral or written. Any conflict or inconsistency will be resolved by giving precedent in the following descending order:

1. 12-22-2023 Decision in *Clarke v. Wisconsin Elections Commission*, No. 2023AP1399-OA; 12-22-2023 Court Order Re Post-Decision Matters; and any subsequent Court orders in *Clarke v. Wisconsin Elections Commission*, No. 2023AP1399-OA.

2. The terms of this Contract.

This Contract may not be amended, modified, or altered except in writing signed by the Contractor and the Director.

I. Examination of Records. Contractor shall establish and maintain adequate records of services provided and expenditures incurred under this Contract. All records must be kept according to generally accepted accounting procedures. All procedures must comply with federal, state, and local laws and ordinances. Contractor will retain these materials for six years following the Contract's completion.

The Wisconsin Supreme Court has, on previous occasions, withheld decision on whether it is subject to Wisconsin's Public Records law. Upon receipt of notice from the Director of a public records request for documents produced or collected under this Contract, the Contractor shall provide the requested documents to the Director.

J. Force Majeure. Neither party shall be in default by reason of any failure in performance of this Contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

K. Hold Harmless. Contractor shall indemnify and hold harmless the State of Wisconsin, the Court, the Director, and its officers, agents, and employees from all suits, actions or claims brought for, or because of, any injuries or damages received by any persons or property resulting from the Contractor's operations, or of any subcontractors, involved in work under this Contract.

L. Independent Capacity of Contractor. The parties hereto agree that Contractor, its officers, agents, and employees, in the performance of this Contract shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the State of Wisconsin, the Court, or the Director. Contractor agrees to take such steps as may be necessary to ensure that each subcontractor of Contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State of Wisconsin, the Court, or the Director.

M. Multiple Originals; Electronic Signature. *This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Contract may be executed electronically. Without limiting the generality of the foregoing, delivery of an executed signature page to this Contract (or any related agreement or instrument) by e-mail attachment, other means of electronic transmission with authorization to attach it to this Contract (or any related agreement or instrument), or any other means of electronic transmission used to obtain an electronic signature shall be deemed to have the same legal effect as delivery of an original signed copy.*

N. Post-Contract Obligations. Upon termination of this Contract for any reason, or upon Contract expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration.

O. Severability. If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision which comes closest in intent to the invalid provision.

P. Subletting or Assignment. Contractor shall not sublet or assign any right or duty in whole or in part without the Director's prior written approval.

Q. Time Is of the Essence. Timely provision of Services required under this Contract shall be of the essence of the Contract, including the provision of services or deliverables within the time agreed or on a date specified.

R. Use of State Name. Except as provided in 12-22-2023 Decision in *Clarke v. Wisconsin Elections Commission*, No. 2023AP1399-OA; 12-22-2023 Court Order Re Post-Decision Matters; any subsequent Court orders in *Clarke v. Wisconsin Elections Commission*, No. 2023AP1399-OA; and Section V of this Contract, Contractor agrees not to use the name of the State of Wisconsin, the Court, the Director, or any partial name in its written materials or publications without the Director's prior written approval.