

FEDERAL TAX COUNSEL SERVICES CONTRACT  
BETWEEN THE  
WISCONSIN EMPLOYEE TRUST FUNDS BOARD  
AND  
MORGAN, LEWIS & BOCKIUS

Effective May 1, 1994

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FEDERAL TAX COUNSEL SERVICES CONTRACT BETWEEN THE  
WISCONSIN EMPLOYERS TRUST FUNDS BOARD  
AND  
MORGAN, LEWIS & BOCKIUS

This CONTRACT, made and entered into this 1st day of may 1994, by and between the WISCONSIN DEPARTMENT OF EMPLOYERS TRUST FUNDS BOARD ("BOARD") under Wis. Stats., 40.03 (1) (c) and MORGAN, LEWIS & BOCKIUS ("MLB").

RECITALS

WHEREAS, the DEPARTMENT OF EMPLOYERS TRUST FUNDS ("DETF") acting as staff and as authorized by the WISCONSIN DEPARTMENT OF EMPLOYERS TRUST FUNDS BOARD ("BOARD") has selected MORGAN, LEWIS & BOCKIUS ("MLB") to provide federal tax counsel services for the Wisconsin Retirement System and related programs; AND

WHEREAS, the BOARD and MLB desire to clarify their respective rights and obligations with respect to the plan as set forth below,

NOW, THEREFORE, in consideration of the mutual covenants contained in this contract, the adequacy of which is hereby acknowledged, the BOARD and MLB (hereinafter the "PARTIES") intending to be legally bound, do agree as follows:

ARTICLE 1.       DEFINITIONS

The following terms, when used and capitalized in this contract or any supplement, endorsements, or riders thereto, are defined as follows and limited to that meaning only:

- 1.1 "BOARD" means the Employee Trust Funds Board.
- 1.2 "DETF" means the Department of Employee Trust Funds.
- 1.3 "MLB" means Morgan, Lewis & Bockius.
- 1.4 "PARTIES" means the Employee Trust Funds Board and Morgan, Lewis & Bockius.
- 1.5 "PROPOSAL" means the proposal dated February 23, 1994 submitted by Morgan, Lewis & Bockius in response to the Employee Trust Funds' Request for Proposals #ETD 0003.

- 1.6 **"RELATED PROGRAMS"** refers to the following programs authorized under Chapter 40 Wisconsin Statutes and administered by DETF: health, life, disability and income continuation insurance programs and deferred compensation arrangements regulated by Section 457, 403 (b) and medical and daycare reimbursement account programs regulated by Section 125 of the Internal Revenue Code
- 1.7 **"RFP"** means the Request for Proposals #ETD 0003 dated February 23, 1994, distributed by the Department of Employee Trust Funds to select Federal Tax Counsel Services for the contract period beginning May 1, 1994.
- 1.8 **"VENDOR"** means the contracted firm, Morgan, Lewis & Boeldus.
- 1.9 **"WRS"** means the Wisconsin Retirement System.

## **ARTICLE 2. CONTRACT TERMS AND PROVISIONS**

### **2.1 Contractor Appointed**

**The BOARD appoints MLB as the Federal Tax Counsel for the AIRS and RELATED PROGRAMS to continue for the term of this contract and any extension of the contract.**

### **2.2 Effective Date**

**The term of this contract shall be May 1, 1994 to June 30, 1995. By mutual agreement this contract may be extended for one-year periods unless terminated in accordance with the terms and provisions as set forth in this contract.**

### **2.3 Renewal**

**The initial contract period may be extended for up to two successive one year periods upon mutual agreement of the BOARD and MLB contingent on the availability of funding. Increases to the hourly rates, as specified in Article 5., 5.2, for any renewal period shall be no greater than the annual percentage change in the Consumer Price Index through December of the preceding year of the adjustment. In the event this contract is extended, all of the conditions and provisions shall remain in full force and effect during the extended term, unless otherwise amended, modified or supplemented in writing by agreement of the "PARTIES" either prior to or at the time of the extensions.**

## **2.4 Execution of Contract**

**This contract becomes binding upon the BOARD and MLB when this document is reviewed, approved and signed by authorized representatives for each party hereto. By their signature, each represents that they have proper and legal authority to sign and bind their principal and that each party has all required legal right and power to perform all acts called for by this contract in the State of Wisconsin and elsewhere.**

## **2.5 Documents Constituting Contract**

**In addition to this document, the contract between the parties shall include the provisions of the Request for Proposals (RFP) for Services to be Provided as the Federal Tax Counsel to DETF dated February 23, 1994; the Proposal for Federal Tax Counsel Services for the Wisconsin Retirement System and Related Programs. submitted by MLB on March 17, 1994 (including the second paragraph of the "Explanation and Conditions of Cost Proposal" incorporated into Attachment E of such proposal) and subsequent clarification letter dated April 6, 1994; all are incorporated herein by reference.**

## **2.6 Order of Precedence**

**Any conflict, ambiguity, or inconsistency among these documents shall be resolved by applying the following order of precedence:**

- A. The contract document and any amendments;**
- B. The RFP and any amendments;**
- C. The MLB proposal (not including the second paragraph of the "Explanation and Conditions of Cost Proposal" incorporated into Attachment E of such proposal) and letter dated April 6, 1994.**

**A higher order document shall supersede a lower order document to the extent necessary to resolve any inconsistencies between them, but silence on any matter in a higher order document shall not negate or modify the provisions of a lower order document as to that matter.**

## **ARTICLE 3. CONTRACT MODIFICATIONS**

### **3.1 Subcontracted Services**

**No right or duty hereunder, in whole or in part, of MLB may be assigned, transferred, sublet, or otherwise transferred or disposed of its rights, title or interest, or of its power to execute the contract to any other person, company, corporation, or entity without the previous written approval of DETF acting as agent for the BOARD.**

**In the event of any such approval, the terms and conditions of this contract shall apply to and bind the party or parties to whom this contract is assigned as fully and completely as MLB is bound and obligated. Any resultant subcontract to which DETF has consented shall be attached to the contract and made a part thereof. No subcontract or delegation shall operate to release the contractor from its liability for the prompt and effective performance of its obligations.**

### **3.2 Amendments**

**This contract can be modified or amended at any time by mutual consent of MLB and the BOARD. Amendments that would affect contracted cost must receive prior approval from the Governor's office. All amendments shall be in writing, attached to this contract, and shall become effective only when approved by appropriate authorities and subsequently executed by the parties hereto.**

### **3.3 Modification, waiver, or consent**

**No modification or waiver of any provision of this contract and no consent by one party to any deviation from its terms by the other party shall be effective unless such modification, waiver, or consent is in writing and signed by both PARTIES, and the modification, waiver, or consent shall be effective only for the period, on the conditions and for the specific instance and purposes specified in such writing.**

### **3.4 Interpretation**

**This contract will be interpreted under the laws of the State of Wisconsin.**

## **ARTICLE 4. CONTRACT DEFAULT AND TERMINATION**

### **4.1 NEGLIGENCE AND DUTIES**

**If DETF has determined MLB is not fulfilling their contract obligations and meeting performance standards as defined in this contract, DETF shall submit a notice in writing to MLB that it has made a tentative determination that willful or reckless neglect has occurred and the specific basis for such tentative determination. DETF shall give MLB at least thirty (30) days to respond to the determination in writing and allow MLB to present its response at a hearing before DETF or the BOARD to be held within forty-five (45) days of the date of the original notice. If MLB fails to meet the contractual obligations noted by DETF within ninety (90) days of the original notice, then the BOARD may terminate this contract and avail itself of all rights and remedies available to it.**

#### **4.2 Breach of Contract**

**If MLB fails to comply with any of the covenants and agreements contained in this contract, including without limitation, the furnishing of sufficient personnel to perform its duties as provided in the contract, then DETF shall give notice to MLB specifying with particularity the nature of MLB's default. If the specified default is not cured to the reasonable satisfaction of ETF within thirty (30) days following the giving of notice of default by the DETF, then the BOARD may terminate this contract and avail itself of all rights and remedies available to it.**

#### **4.3 Due Diligence**

**MLB shall exercise due diligence in providing services under this contract. In order to protect the Board and any DETF employe against liability, costs or expenses (including reasonable attorney's fees) which are incurred or sustained as a result of MLB errors or other failure to comply with terms of this contract, MLB shall maintain a reasonable level of malpractice insurance in force during the contract period.**

#### **4.4 Severability**

**The provisions of this contract are severable, and, if for any reason a clause, sentence, paragraph, or other part of this contract shall be determined to be invalid by a court or federal or state agency board or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions of this contract which can be given meaningful effect without the invalid provision.**

#### **4.5 Contract Subject to Availability of Funds**

**DETF's financial obligation under this contract is subject to the availability of funds and appropriations authorized by the Legislature. In the event such funds or appropriations will not be available, the Federal Tax Counsel will be given notice that the contract will be terminated.**

#### **4.6 Acts of God**

**Neither party to the contract shall be in default by reason of failure to perform in accordance with its terms if such failure arises out of causes beyond reasonable control and without fault or negligence on their part. Such causes may include, but are not limited to, acts of God or public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine or restrictions, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the reasonable control and without fault or negligence of the party.**

ARTICLE 5.

COMPENSATION OF PARTIES

5.1 Retainer Fees

- A. In consideration of the services as specified herein which will be provided by MLB to DETF, DETF agrees to pay MLB the following retainer fees: \$25,000 for the period May 1, 1994 to June 30, 1994; \$40,000 for the period July 1, 1994 to June 30, 1995.
- B. Retainer fees are payable in equal installments at the end of each month upon submission of a billing by MLB to DETF's accounts receivable. Final invoice at termination of contract shall be submitted on or before July 15, 1995 for services provided in June 1995. All payments made for services billed shall be considered final.
- C. DETF reserves the right to withhold up to 20% of the contracted amount to assure delivery of incomplete projects or in the event of unresolved disputes over the quality of the delivered work.

5.2 Special Project Services

For any special project services that are outside the scope of this contract, and mutually agreed to by the "PARTIES", the fees for services will be based on the hourly rates specified as follows:

Services provided by Carol V. Calhoun, Lead Counsel, shall be billed at \$240 per hour.

Services provided by Valerie Grace, Employee Benefits Attorney shall be billed at \$200 per hour.

Services provided by Patricia Kennedy, non-lawyer professional, shall be billed at \$95 per hour.

ARTICLE 6. RESPONSIBILITIES OF MORGAN, LEWIS & BOCKIUS

6.1 Phase 1 Responsibilities

Phase 1 of the Federal Tax Counsel Services requires MLB to assess compliance with IRS qualification requirements of the WRS and related programs shall be completed by June 30, 1994. This review includes, but is not limited to, a review of the following:

- A. Review all benefit plan provisions of the Wisconsin Retirement System affected by the Internal Revenue Code and identify compliance and qualification issues.
- B. Review all of the additional and required contribution provisions contained in Chapter 40, Wis.Stats. and advise the agency as to the appropriate limits on annual and cumulative contributions under IRC section 415.
- C. Provide guidance on IRS filing requirements applicable to public pension plans concerning distributions and plan-to-plan transfers.
- D. Provide guidance on the proper implementation of the pension plan mandatory 20% withholding and rollover provisions contained in P.L. 102-318 and implemented in various Internal Revenue Code Sections.
- E. Provide guidance to the Department of Employee Trust Funds on calculation of the contribution limit (maximum exclusion allowance) under section 403(b) of the Internal Revenue Code for additional contributions made to the WRS by participating employees who are teachers.
- F. Clarify current IRS requirements as they apply to WRS distributions and advise of changes to 1099-R reporting that may be needed to conform DETF reporting practices to IRS requirements.

6.2 Phase 2 Responsibilities

Phase 2 of the contracted services shall be completed during the period July 1, 1994 to June 30, 1995 and includes, but is not limited to, the following:

- A. Provide both general and case-by-case legal advice as requested by DETF or the BOARD on the following topics, based on applicable fact situations specified in the request:

- 1. Provide guidance on withholding requirements from pension plan distributions as they relate to non-resident aliens or U.S. citizens living outside of the U.S.**
  - 2. Draft private letter ruling requests to the IRS on specific questions in all benefit plans administered by the Department of Employee Trust Funds including Deferred Compensation under IRC section 457, group health and life insurance, disability insurance, employe reimbursement accounts (ERA) under IRC section 125.**
  - 3. Provide guidance on federal estate tax questions raised by DETF.**
  - 4. Provide guidance to the Department on federal tax law requirements that may be unique to individual circumstances as they arise.**
  - 5. Assist in resolving specific tax reporting issues with the IRS as they arise.**
  - 6. Provide guidance to the Department on advising participants of taxability of WRS and other disability benefits paid by the Department of Employee Trust Funds.**
- B. Analyze and track proposed federal tax legislation and regulations and advise the agency and the agency's retirement, group insurance and deferred compensation boards as to the implications of such laws and regulations on WRS participants, plan funding and administration.**

### **6.3 Litigation and Lobbying**

**Notwithstanding the preceding paragraphs [6.2 A. through F. and 6.3. A. (1) through (6.) and B.] the DETF and BOARD agree not to request advice from MLB on a matter which is in litigation in a state or federal or tax court and to which action either by the DETF or Board is a party at the time of the request for advice. The advisory services under this Article 6 also do not include any lobbying of any state legislature or of any state or federal agency with respect to proposed administrative rule-making.**

### **6.4 Meetings in Madison**

**At DETF's request, MLB shall meet with DETF staff in Madison one time during each phase of this contract. DETF shall provide ample time to MLB to schedule such meetings and scheduled meeting times shall be mutually agreeable by each party.**

## **6.5 Continuing Legal Education Credits**

**At the direction of DETF and during both Phase 1 and Phase 2 services, MLB shall provide continuing legal education to the Department legal staff meeting requirements for at least 4.0 Wisconsin CLE hours during each period on topics concerning federal tax law that affect public pension plans. At DETF's discretion, this training may be conducted in Madison, Wisconsin by MLB and other DETF staff may be allowed to participate or this requirement may be met by utilizing an established training class in or outside of Madison, Wisconsin that is mutually agreeable by both parties. All costs for this training are the responsibility of MLB. In consideration of DETF legal staff commitments, the 4.0 Wisconsin CLE credits to be scheduled during phase 1 may be delayed up to August 1, 1994.**

## **6.6 Assigned Counsel**

- A. MLB shall provide a means by which any change in its staff assigned to provide services to DETF may be effected with a minimum of disruption to the services being provided under this contract.**
- B. The federal tax counsel services for the WRS and RELATED PROGRAMS shall at all times be performed by the staff outlined in MLB's Proposal. DETF reserves the right to reject any substitute staffing and may terminate the contract if an acceptable substitution cannot be made available by MLB.**

## **6.7 Reporting and Communication**

- A. MLB shall provide reports to DETF regarding the progress of each phase at least monthly.**
- B. MLB shall channel all requests, reports and other communication in connection with this contract through DETF's designee(s).**
- C. MLB shall document ideas and issues raised in discussions and meetings.**

# **ARTICLE 7. RESPONSIBILITIES OF DETF**

## **7.1 Make Information Available**

**DETF will furnish MLB with such information as may be determined to be necessary for the performance of the work described herein.**

**ARTICLE 8. MISCELLANEOUS PROVISIONS**

**8.1 Conflict of Interest**

**During the term of the contract, MLB shall not have any interest, direct, or indirect, that would conflict in any manner or degree with the performance of services required under the contract. Without limiting the generality of the preceding statement, MLB shall not, during the initial contract period and any extension, acquire or hold any business interest relating to the performance of the contract.**

**8.2 Applicable Law**

**This contract shall be construed and enforced in accordance with and be governed by the laws of the State of Wisconsin.**

**8.3 Confidential Nature of Information**

**MLB will ensure the confidentiality of the in individual records used in the performance of the contract. All information obtained by MLB shall not be utilized by MLB or any of its officers, directors, agents or employees in connection with any other matter without prior written consent of DETF. Any information obtained from the DETF or BOARD identifying a specific participant in the WRS or RELATED PROGRAMS, or from which an individual participant could possibly be identified, including but not limited to name, address, Social Security Number, date of birth, marital status, earnings, contributions, interest credits, beneficiary designations or creditable service, shall be kept confidential and shall not be disclosed except as expressly authorized by DETF or under a court order as provided in s. 40.07 (1)(c), Wis. Stats. Any other requests for disclosure of such information shall be referred to DETF.**

8.4 Nondiscrimination in Employment

In connection with the performance of work under this contract, MLB agrees not to discriminate against any employe or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wisconsin Statute s. 51.01 (5), sexual orientation or national origin. This provision shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, MLB shall take affirmative action measures to ensure equal employment opportunities. MLB agrees to post in a conspicuous places, available for employes and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discriminators clause. MLB shall file a written Affirmative Action Plan with the DETF within thirty (30) days of signing the contract. Such plan is subject to DETF approval.

IN WITNESS WHEREOF, the parties hereto cause this contract to be executed by their duly authorized representatives as of the day and year set forth.

STATE OF WISCONSIN  
EMPLOYE TRUST FUNDS BOARD

Attest:

By Mary Willett

By J J w4)~  
DETF Secretary\* behalf of  
Employee Trust Fund's Board

Attest:

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MORGAN, LEWIS & BOCIGUS

By Carol R. Calhoun

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Title