

**MICHIGAN ECONOMIC DEVELOPMENT CORPORATION
PROFESSIONAL SERVICES CONTRACT WITH
CERTEC, INC.**

The Michigan Economic Development Corporation (the "MEDC") enters into a binding agreement for professional services (the "Agreement") with Certec, Inc. (the "Contractor"). The MEDC and Contractor shall sometimes be referred in this Agreement individually as "Party" or collectively as "Parties."

Contractor: Certec, Inc.
111 West Short Street
Lexington, KY 40507

NATURE OF SERVICES:

To develop an independent estimate of return on investment (ROI) for the 2003 advertising campaign.

PERFORMANCE SCHEDULE:

Starting Date: June 15, 2007 Ending Date: October 31, 2007

The term of this Agreement (the "Term") shall begin on the Starting Date and end on the Ending Date, unless terminated earlier as permitted under Paragraph 10 of the Section titled "Terms and Conditions."

COMPENSATION INFORMATION:

1. The MEDC agrees to pay Contractor an amount not to exceed \$5,000.00 during the Term. This amount includes all embedded expenses.
2. Payment under this Agreement shall be made by the MEDC to Contractor upon receipt and approval by the Contract Manager of Contractor's billing statement stating that the work for which payment is requested has been appropriately performed. Contractor shall provide the Contract Manager with Contractor's billing statement on a monthly basis.
3. Changes in the budget will be allowed only upon prior review and written approval by the Contract Manager.
4. Contractor's billing statement (s) may be subject to a final audit prior to the release of final payment.

MEDC CONTRACT MANAGER: Contractor should communicate with the following MEDC representative or designee regarding this Agreement:

Maria Mendez
Michigan Economic Development Corporation
300 N. Washington Square
Lansing, Michigan 48913
Telephone: (517) 373-1421

TERMS AND CONDITIONS:

1. **CONTRACTOR DUTIES.** Contractor agrees to undertake, perform, and complete the services described in **Exhibit A**, which is incorporated herein by reference.
2. **INDEPENDENT CONTRACTOR.** Contractor will act as an independent contractor under this Agreement, and neither Contractor nor any employee or agent or contract personnel of Contractor is, or shall be deemed to be, an employee of the MEDC due to this Agreement and the relationship between Contractor and MEDC. In its capacity as an independent contractor, Contractor agrees to and represents the following:
 - Contractor will provide the services under this Agreement free from the direction or control of the MEDC as to means, manners, and methods of performance.
 - Contractor has the right and does fully intend to perform services for third parties during the Term.
 - Contractor acknowledges that any work product developed by Contractor in performance of this Agreement shall be the sole property of the MEDC and the MEDC shall have the right to copyright or otherwise protect its rights in and ownership of the work product.
 - The services required by this Agreement shall be performed by Contractor, or Contractor's employees or contract personnel, and the MEDC shall not hire, supervise, or pay any assistants to help Contractor.
 - Neither Contractor nor Contractor's employees or contract personnel shall receive any training from the MEDC in the professional skills necessary to perform the services required by this Agreement.
 - Neither Contractor nor Contractor's employees or contract personnel shall be required by the MEDC to devote full time to the performance of the services required by this Agreement.
 - Contractor does not receive the majority of its annual compensation from the MEDC.

The Parties acknowledge and agree that the MEDC is entering into this Agreement with reliance on the representations made by Contractor relative to its independent contractor status.

3. **PERMITS AND LICENSES.** Contractor declares that Contractor has complied with all federal, state and local laws requiring any business permits, certificates or licenses required to carry out the services to be performed under this Agreement, and Contractor will maintain those permits, certificates and/or licenses throughout the Term.
4. **MATERIALS.** Contractor will furnish all materials, equipment and supplies used to provide the services required by this Agreement.
5. **STATE AND FEDERAL TAXES.** The MEDC will not:
 - Withhold FICA (Social Security and Medicare taxes) from Contractor's payments or make FICA payments on Contractor's behalf;
 - Make state or federal unemployment compensation contributions on Contractor's behalf, or withhold state or federal income tax from Contractor's payments.

Contractor shall pay all taxes incurred while performing services under this Agreement, including, but not limited to all applicable income taxes. If requested by the MEDC, Contractor shall provide the MEDC with proof that such payments have been made.

6. **FRINGE BENEFITS.** Contractor understands that neither Contractor nor Contractor's employees or contract personnel are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the MEDC.
7. **WORKERS' COMPENSATION.** The MEDC shall not obtain workers' compensation insurance on behalf of Contractor or Contractor's employees. If Contractor hires employees to perform any work under this Agreement, Contractor shall cover them with workers' compensation insurance and shall maintain such insurance during the Term. The MEDC may, in its discretion, require Contractor to provide evidence of such coverage.
8. **UNEMPLOYMENT COMPENSATION.** The MEDC shall make no state or federal unemployment compensation payments on behalf of Contractor or Contractor's employees or personnel. Contractor will not be entitled to these benefits in connection with work performed under this Agreement. If Contractor files a petition for and receives unemployment compensation, the total amount of unemployment compensation awarded to and received by Contractor shall be deducted from and be an offset against the amount of compensation due and payable to Contractor by the MEDC under this Agreement.
9. **ACCESS TO RECORDS.** Contractor shall maintain reasonable records, including evidence that the services actually were performed and the identity of all individuals paid for such services, and shall allow access to those records by the MEDC or its authorized representative.

- 10. TERMINATION.** Either Party may terminate its obligations under this Agreement by giving the other Party thirty (30) calendar days' prior written notice of such termination. The MEDC may immediately terminate this Agreement upon written notice to Contractor if Contractor materially breaches its obligations under this Agreement or engages in any conduct which the MEDC, in its sole discretion, determines has or could have an adverse impact on the State of Michigan's (the "State") or the MEDC's reputation or interests. In addition, the MEDC may immediately terminate this Agreement upon written notice to Contractor without further liability to the MEDC or the State, its departments, agencies, and employees if Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense relating to a State, public, or private contract or subcontract; or convicted of a criminal offense including, but not limited to, any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under state or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the MEDC, reflects on Contractor's business integrity.

The MEDC shall have no obligation to Contractor for any fees or other payments with respect to the period after the effective date of termination. Upon termination, all work product prepared or produced by Contractor pursuant to this Agreement shall be immediately delivered to the MEDC. Payment for any undisputed services rendered and expenses incurred through the effective date of termination will then promptly be made by the MEDC.

Notwithstanding the foregoing, Contractor acknowledges that MEDC's performance of its payment obligation is dependent upon the MEDC Executive Committee's continued approval of funding and/or the continued receipt of State funding. In the event that the State Legislature, the State Government or any State official, public body corporate, commission, authority, body or employees, including the MEDC Executive Committee: (a) takes any legislative or administrative action which fails to provide, terminates or reduces the funding that is related to the source of funding for the MEDC; or (b) takes any legislative or administrative action that is unrelated to the source of funding for this Agreement, but affects the MEDC's ability to perform obligations under this Agreement, then the MEDC may choose to terminate this Agreement by providing thirty (30) calendar days notice prior to the effective date of cancellation. In the event, however, that the action of the State Legislature, the State of Michigan or MEDC's Executive Committee results in an immediate absence or termination of funding, this Agreement may be terminated effective immediately upon delivery of notice to the Contractor. In the event of immediate termination of funding, the MEDC will make payment through the effective date of termination for any undisputed services rendered and expenses incurred. MEDC has no further obligation to pay under this Agreement beyond the effective date of termination for obligations Contractor may incur in connection with this Agreement.

11. **MEDC EMPLOYEES.** Contractor will not hire any employee of the MEDC to perform any services covered by this Agreement without prior written approval from the Chief Executive Officer of the MEDC.
12. **CONFIDENTIAL INFORMATION.** Except as required by law, Contractor shall not use or disclose, either before, during or after the Term, any proprietary or confidential information, including, but not limited to, applications, business proposals, business plans, economic development analyses, computer programs, databases and all materials furnished to Contractor by the MEDC (collectively "Confidential Information") without the prior written consent of the MEDC. Confidential Information does not include information obtained by Contractor from third party sources that is already in the possession of, or is independently developed by, Contractor, or that becomes publicly available other than through breach of this Paragraph, or is released with the prior written consent of the governmental entity or entities that provided the Confidential Information to Contractor. Contractor acknowledges that all information provided by the MEDC in connection with Contractor's duties under this Agreement shall be treated as Confidential Information unless otherwise stated in this Paragraph.
13. **CONFLICT OF INTEREST.** Contractor affirms that to the best of its knowledge there exists no actual or potential conflict of interest between the Contractor, Contractor's project manager(s) or its family, business, or financial interests and the services under this Agreement. In the event of change in either the interests or services under this Agreement, Contractor will inform the MEDC regarding possible conflicts of interest which may arise as a result of such change. Contractor agrees that conflicts of interest shall be resolved to the MEDC's satisfaction or the MEDC may terminate this Agreement. As used in this Paragraph, "conflict of interest" shall include, but not be limited to, conflicts of interest that are defined under the laws of the State of Michigan.
14. **REPRESENTATIONS OF CONTRACTOR.** Contractor affirms to the best of its knowledge that it or its owners:
- Do not have any criminal convictions.
 - Are not a subject of any pending criminal investigation.
 - Are not a subject of any past, present or pending investigations by the Internal Revenue Service or any other federal or state taxing body or court.
 - Are not a subject of any past, pending or present litigation regarding its conduct.
15. **STATE OF MICHIGAN COMPETITORS.** Any information or knowledge Contractor gains during the course of this Agreement concerning the economic development efforts of the State of Michigan, the MEDC or the business conditions or business community in Michigan shall not be disclosed to any public or private party, sovereign authority or foreign government, during the Term and for a period of two (2) years after the effective date of termination of this Agreement or so long as any information remains confidential pursuant to any contract, law, treaty, resolution or other enforceable promise.

- 16. INDEMNIFICATION AND CONTRACTOR LIABILITY INSURANCE.** To the extent permitted by law, Contractor shall indemnify, defend, and hold harmless the MEDC and its employees (the "Indemnified Parties") from any and all liability arising out of or in any way related to Contractor's performance of services under this Agreement during the Term, including any liability resulting from any acts of Contractor's employees or agents. Contractor shall purchase and maintain such insurance to protect the Indemnified Parties from claims that might arise out of or as a result of Contractor's operations. Contractor will provide and maintain its own errors and omissions liability insurance for Contractor's indemnification obligation under this Agreement. The insurance shall be written for not less than One Million (\$1,000,000) Dollars of coverage, but does not limit Contractor's indemnification to this amount.
- 17. TOTAL AGREEMENT.** This Agreement, together with **Exhibit A**, contains the entire agreement between the Parties superseding any prior or concurrent agreements as to the services being provided, and no oral or written terms or conditions which are not contained in this Agreement shall be binding. This Agreement may not be changed except by written agreement signed by the Parties.
- 18. ASSIGNMENT/TRANSFER/SUBCONTRACTING.** Contractor shall not assign, transfer, convey, subcontract, or otherwise dispose of any duties or rights under this Agreement without the prior specific written consent of the MEDC. Contractor agrees that any of Contractor's future successors or subcontractors will be bound by the provisions of this Agreement unless MEDC otherwise agrees in a specific written consent. The MEDC reserves the right to approve subcontractors for this Agreement and to require Contractor to replace subcontractors who are found to be unacceptable.
- 19. NON-DISCRIMINATION AND UNFAIR LABOR PRACTICES.** In connection with this Agreement, Contractor shall comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101 *et seq.*, and all other federal, state and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Contractor further agrees that every subcontract entered into in connection with this Agreement will contain a provision requiring nondiscrimination in employment, as required in this Agreement, binding upon each subcontractor. A breach of this covenant not to discriminate in employment is a material breach of this Agreement. In addition, as provided in Executive Directive 2003-24, Contractor shall not discriminate against any employee or applicant for employment with respect to his or her hire, terms, tenure, conditions or privileges of employment, or any matter directly or indirectly related to employment because of sexual orientation unrelated to the individual's ability to perform the duties of a particular job or position.

20.

Pursuant to 1980 PA 278 (the "Act"), MCL 423.321 *et seq.*, the State shall not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled by the United States National Labor Relations Board. Contractor, in relation to this Agreement, shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears on this register. Pursuant to section 4 of the Act, the MEDC may void this Agreement if, after the Starting Date, the name of the Contractor as an employer or the name of the subcontractor, manufacturer or supplier of Contractor appears on the register.

20. **JURISDICTION.** The laws of the State of Michigan shall govern this Agreement. The Parties shall make a good faith effort to resolve any controversies that arise regarding this Agreement. If a controversy cannot be resolved, the Parties agree that any legal actions concerning this Agreement shall be brought in the Ingham County Circuit Court in Ingham County, Michigan, USA. Contractor acknowledges by signing this Agreement that it is subject to the jurisdiction of this court and agrees to service by first class or express delivery wherever Contractor resides, in or outside of the United States.
21. **COMPLIANCE WITH LAWS.** Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the services under this Agreement.
22. **NO PARTNERSHIP OR AGENCY RELATIONSHIP.** This Agreement does not create a partnership relationship. Further, neither Contractor nor Contractor's employees or other representatives shall hold themselves out to third parties as an agent or representative of MEDC, nor shall they have any authority to take any action or enter into any agreement on behalf of MEDC.
23. **NO THIRD PARTY BENEFICIARIES.** There are no express or implied third party beneficiaries to this Agreement.
24. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts and by facsimile, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.
25. **REIMBURSEMENT.** If this Agreement is terminated as a result of the misuse of funds as reasonably determined by the MEDC, MEDC shall have no further obligation to make any payments to Contractor. Furthermore, Contractor shall reimburse MEDC for payments which were expended for purposes other than as set forth in this Agreement, as well as any funds which were previously disbursed under this Agreement but not yet expended by Contractor.

The signatories below warrant that they are empowered to enter into this Agreement.

CONTRACTOR ACCEPTANCE:

Certec, Inc.

Dated: 7/17/07

By: James A. Carr

Its: President.

MEDC ACCEPTANCE:

Michigan Economic Development Corporation,
A Public Body Corporate

Dated: _____

By: _____

Lisa Dancsok
Executive Vice President

The signatories below warrant that they are empowered to enter into this Agreement.

CONTRACTOR ACCEPTANCE: Certec, Inc.

Dated: _____

By: _____

Its: _____

MEDC ACCEPTANCE: Michigan Economic Development Corporation,
A Public Body Corporate

Dated: _____

By: Lisa Dancsok 7/19/07
Lisa Dancsok
Executive Vice President

CERTEC INC.

111 WEST SHORT STREET • LEXINGTON, KY 40507 • (800) 9-CERTEC • FAX (859) 225-8640

Proposal**Validation of Travel Michigan's Rate of Return
on Advertising Estimating System**

Submitted by: James A. Carr, Certec, Inc.

Date: January 17, 2007

Introduction

Travel Michigan has requested that Certec, Inc. in partnership with Michigan State University perform an independent analysis of the rate of return (ROI) on its 2003 advertising campaign in Chicago, Cleveland, and Indianapolis. Longwoods International has provided Travel Michigan with its estimate of ROI for that year, and Certec, Inc., then under contract with Travel Michigan, collected advertising impact data for the campaign which can be used in developing an alternative estimate of ROI.

The purpose of this project is to develop an independent estimate of ROI for the 2003 advertising campaign to compare to the estimate derived based upon the data supplied by Longwoods International. If the results are comparable (e.g., within 5-10%) of each other, it will provide solid but not conclusive evidence of the validity of the procedures that Travel Michigan is employing to calculate ROI. Further review and replication would be necessary to confirm the results of this evaluation.

Methods – The campaign impact data were derived from surveys of random samples of households in the three DMAs (Chicago, Cleveland, and Indianapolis) administered before and after the campaign. The numbers of interviews completed before and after the campaign were as follows:

	<u>Before</u>	<u>After</u>
Chicago	54	304
Cleveland	72	303
Indianapolis	83	301

Our method for deriving impact estimates differs from that employed by Longwoods International which uses a representative consumer panel of respondents. The amount of investment in the campaign used will be identical to that used by Travel Michigan. Other data needed to complete the analysis will be drawn from secondary sources such as the U.S. Census and Michigan State University's regional Michigan Travel Market Survey. Here again, there are differences in the underlying methods used to generate these data.

The algorithm employed in developing our ROI estimate will be described in detail in our report along with all assumptions that were used in formatting data inputs. This transparency in the details of our approach will allow Travel Michigan to compare the specific elements in both approaches.

Budget

Personnel

James Carr	20 hours @ \$95	\$1,900
Don Holecek	20 hours @ \$95	\$1,900
Teresa Herbowicz	20 hours @ \$40	<u>\$800</u>
		\$4,600

Operations

Communications, supplies	\$400
--------------------------	-------

Total	\$5,000
-------	---------

Completion date

60 days after receiving the payment.