

**CONTRACT FOR SERVICES BETWEEN
XXXXXXXXXX AND THE
OHIO BOARD OF REGENTS**

THIS CONTRACT is between the Ohio Board of Regents (hereinafter referred to as "Regents") a governmental body established by the Ohio General Assembly pursuant to Ohio Revised Code §3333.02, located at 30 East Broad Street, 36th Floor, Columbus, OH 43215, and XXXXXXXXXXXX (the "Contractor"), located at XXXXXXXXXXXX.

WHEREAS, Regents serves as the coordinating body for higher education in the State of Ohio; and

WHEREAS, Regents desire to secure the services of a Contractor to assist Regents with work related to XXXXXXXXX;

WHEREAS, Regents is authorized to enter into contracts with consultants to discharge the board's duties pursuant to Ohio Revised Code §3333.044;

WHEREAS, Contractor is authorized to transact business in the State of Ohio, is engaged in the business of consulting, and is prepared to provide these services to Regents in accordance with the terms set forth hereinafter; and

WHEREAS, the services required by Regents are essential to the mission and duties of the Ohio Board of Regents.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein and for other good and valuable consideration, Regents and Contractor (individually, a "Party"; collectively the "Parties") hereby agree as follows:

Article I: Statement of Work

Exhibit I, which is attached hereto and made fully a part of this Contract as if fully written herein describes the work (the "Project") the Contractor will complete and any materials the Contractor will deliver (the "Deliverables") under this Contract. Contractor shall primarily work with XXXXXXXXXX, for the Ohio Board of Regents who shall be the Project Representative for this Contract.

Article II: Term

The Contract begins on the date upon which all parties have executed this Contract or on XXXXXXXX, whichever date is later. Unless this Contract is terminated or expires without renewal, it will remain in effect until the Project is completed to the satisfaction of Regents and the Contractor is paid. This CONTRACT shall be completed by XXXXXXXXXXXX.

The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end

of the current biennium, which is June 30, 2007. Regents may renew this Contract in the next biennium by issuing written notice to the Contractor of the decision. This expiration and renewal procedure will also apply to the end of any subsequent biennium during which the Project continues.

Article III: Compensation

In consideration of the Contractor's promises and satisfactory performance, Regents will pay the Contractor the amount(s) identified in Exhibit I (the "Fee"), plus any other expenses identified as proper and necessary reimbursements in Exhibit I.

In no event will payments under this Contract exceed the amount specified in Exhibit I without the prior, written approval of Regents and, when required, the Ohio Controlling Board and any other legally mandated authorizing body.

The Contractor's right to the Fee is contingent on the complete and satisfactory performance of the Project, or, in the case of milestone payments or periodic payments of an hourly, daily, weekly, monthly or annual rate, all relevant parts of the Project tied to the applicable milestone or period to which the payment is tied.

Payment of the Fee is also contingent on the Contractor delivering a proper invoice and any other documents required by Exhibit I. An invoice must comply with Regents' current policies regarding invoices and their submission. (Attached hereto as Exhibit II.) Regents will notify the Contractor in writing within 15 days after it receives a defective invoice of any defect and provide the information necessary to correct the defect.

Contractor shall submit a completed W-9 form, if needed, to Regents prior to performing any work hereunder. Regents shall not be obligated to compensate Contractor for any work performed hereunder if Contractor has not provided Regents with a completed W-9 form.

Article IV: Reimbursable Expenses

Regents will pay all reimbursable expenses identified in Exhibit I, if any, in accordance with section 126.31 of the Ohio Revised Code (the "Code"). The Contractor will assume all expenses that it incurs in the performance of this Contract that are not identified in Exhibit I.

Article V: Certification of Funds

None of the rights, duties or obligations in this Contract will be binding on Regents, and the Contractor will not begin its performance, until all the following conditions have been met: (a) all statutory provisions under the Code, including section 126.07, have been met; (b) all necessary funds are made available the appropriate state agencies; (c) if required, approval of this Contract is given by the Controlling Board of Ohio; and (d) in the event that Regents are relying on federal or third-party funds for this Contract, Regents provide the Contractor with written notice that such funds have been made available.

Article VI: Employment Taxes

Each party will be solely responsible for reporting, withholding and/or paying all employment related taxes, payments and/or withholdings for its own personnel, including, but not limited to federal, state and local income taxes, social security, unemployment or disability deductions, withholdings and/or payments (together with any interest and penalties not disputed with the appropriate taxing authority).

Article VII: Sales, Use, Excise and Property Taxes

Regents are exempt from any sales, use, excise and property tax. To the extent sales, use, excise or any similar tax is imposed on the Contractor in connection with the Project, such will be the sole and exclusive responsibility of the Contractor, and the Contractor will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the services are rendered or a later time.

Article VIII: Subcontracting

Only the Contractor will perform the Project, and the Contractor will not enter into subcontracts for the Project without written approval from Regents. The Contractor will not need Regents' written approval to subcontract for the purchase of commercial goods that are required for satisfactory completion of the Project. All subcontracts will be at the sole expense of the Contractor unless expressly stated otherwise in Exhibit I.

Article IX: Equal Employment Opportunity

While undertaking all work required to complete the Project, the Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age or Vietnam-era veteran status ("Protected Status").

The Contractor agrees to post notices with the provisions of this section in conspicuous places available to employees and applicants and to state in all solicitations and advertisements for employees that it is an equal opportunity employer.

Article X: Insurance

The Contractor will provide the following insurance coverage at its own expense throughout the term of this Contract:

- (a) Workers' compensation insurance, if required by Ohio law, and, if some of the Project will be done outside Ohio, the laws of the appropriate state(s) where work on the Project will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.
- (b) [Personal injury, bodily injury, and property damage liability insurance, including automobile coverage, with personal injury and bodily injury of not less than \\$1,000,000.00 combined single](#)

limit, and property damage of at least \$500,000.00 for any one occurrence.

The Contractor will also furnish a certificate of insurance to Regents for the required coverage evidencing insurance from an insurance carrier, or carriers, authorized to do business in Ohio. The certificate must be in a form that describes the contents of the policies and the quality of the insurance carriers and is satisfactory to Regents. The Contractor shall agree to:

- (a) Provide 30 day's advance notice in writing to Regents before cancellation.
- (b) Have an endorsement providing that the insurance is primary insurance and over any coverage held by Regents.
- (c) List Regents as an additional insured.

Article XI: Termination for Cause

Regents may terminate this Contract if the Contractor defaults in meeting its obligations under this Contract and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy (or similar proceeding) has been filed by or against the Contractor.

Regents may also terminate this Contract in the event that the Contractor violates any law or regulation in completing the required hereunder or if it appears to Regents that the Contractor's performance is substantially endangered through no fault of Regents.

In any such case, the termination will be for cause, and Regent's rights and remedies will be those identified below for termination for cause.

Article XII: Cure Period

Upon written notice tendered by Regents, the Contractor will have 30 days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 days after receiving such written notice or if the breach is not one that is curable, Regents will have the right to terminate this Contract.

Regents may choose to terminate this Contract in the case of breaches that are cured within 30 days but are persistent. "Persistent" in this context means that Regents has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three times. After the third notice, Regents may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three notices need not relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than 30 days or for no cure period at all. Those specific cure provisions will prevail over this clause. If a particular section does not state what the cure period will be, this provision will govern.

Article XIII: Termination for Convenience of Regents

Regents may also terminate this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Project. If a third party is providing funding for the Project, Regents may

also terminate this Contract should that third party fail to release any Project funds. Exhibit I identifies any third party source of funds for the Project.

If the termination is for the convenience of Regents, the Contractor will be entitled to compensation for any work on the Project that the Contractor has performed before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by Regents to be owing to the Contractor. Regents will make that determination based on the lesser of the percentage of the Project completed or the hours of work performed in relation to the estimated total hours required to perform the entire Project.

Article XIV: Notice of Termination

The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. Upon receipt of the notice of termination, the Contractor will immediately cease all work on the Project and take all steps necessary to minimize any costs the Contractor will incur related to this Contract. The Contractor will also immediately prepare a report and deliver it to Regents. The report must detail the work completed at the date of termination, the percentage of the Project's completion, any costs incurred in the doing the Project to that date, and any Deliverables completed or partially completed but not delivered to Regents at the time of termination.

The Contractor will also deliver all the completed and partially completed Deliverables to Regents with its report. But, if delivery in that manner would not be in Regents' interest, then the Contractor will propose a suitable alternative form of delivery.

Article XV: Cover

If Regents terminates this Contract for cause, it will be entitled to cover for the Project by using another Contractor on such commercially reasonable terms as it and the covering contractor may agree. The Contractor will be liable to Regents for all costs related to covering for the Project to the extent that such costs, when combined with payments already made to the Contractor for the Project before termination, exceed the costs that the State would have incurred under this Contract. The Contractor will also be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause.

Article XVI: Excusable Delay

Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date as soon as practicable after notice of delay. In the event of any such excusable delay, the date of performance or of delivery will be extended for a period equal to the time

lost by reason of the excusable delay. The delayed party must also describe the cause of the delay and what steps it is taking to remove the cause.

The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not take commercially reasonable steps to mitigate or avoid the delay. Work that is controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom Contractor has no legal control.

Article XVII: Independent Status of the Contractor

The parties will be acting as independent contractors. The partners, employees, officers, and agents ("Personnel") of one party, in the performance of this Contract, will act only in the capacity of representatives of that party and not as Personnel of the other party and will not be deemed for any purpose to be Personnel of the other. Each party assumes full responsibility for the actions of its Personnel while they are performing services pursuant to this Contract and will be solely responsible for paying its Personnel (including withholding of and/or paying income taxes and social security, workers' compensation, disability benefits and the like). Neither party will commit, nor be authorized to commit, the other party in any manner. The Contractor's subcontractors will be considered the agents of the Contractor for purposes of this Contract.

Article XVIII: Ownership of Deliverables

All custom work done by the Contractor and covered by this Contract will be treated as "work for hire" on behalf of Regents, with all rights, title and interest in all intellectual property that come into existence through the Contractor's custom work being assigned to Regents. Additionally, the Contractor waives any author rights and similar retained interests in custom-developed material. The Contractor will provide Regents with all assistance reasonably needed to vest such rights of ownership in Regents.

Article XIX: Warranties

The Contractor warrants that the recommendations, guidance and performance of the Contractor under this Contract will: (1) be in accordance with sound professional standards and the requirements of this Contract and without any material defects; (2) unless otherwise provided in Exhibit I, be the work solely of the Contractor; and (3) no Deliverable will infringe on the intellectual property rights of any third party; and (4) Contractor warrants that it is compliance with the requirements of §9.24 of the Revised Code and has no unresolved findings for recovery issued against Contractor by the Auditor of State.. The warranty regarding professionalism and material defects is a one year warranty. All other warranties will be continuing warranties. If any portion of the Project fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for such portion of the Project. The Contractor will also indemnify Regents for any direct damages and claims by third parties based on a breach of these warranties.

Article XX: EXCLUSION OF WARRANTIES

THE CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESS WARRANTIES CONTAINED IN THIS CONTRACT. THE CONTRACTOR ALSO MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS FOLLOWS: IF THE CONTRACTOR HAS BEEN ENGAGED UNDER THE SCOPE OF WORK IN EXHIBIT I TO DESIGN A PRODUCT TO MEET A PARTICULAR NEED FOR REGENTS, THEN THE CONTRACTOR WARRANTS THAT THE CONTRACTOR'S WORK WILL MEET THE STATED PURPOSE FOR THAT WORK.

Article XXI: Indemnity for Property Damage and Bodily Injury

The Contractor will indemnify Regents for all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of the performance of this Contract, providing such bodily injury or property damage is due to the fault of the Contractor, its employees, agents or subcontractors and occurs without negligence on the part of Regents or any of its employees.

Article XXII: LIMITATION OF LIABILITY

EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

Article XXIII: Acceptance

There will be no formal acceptance procedure unless Exhibit I expressly provides otherwise. If Exhibit I does not provide otherwise, the acceptance procedure will be an informal review by the Project Representative to ensure that each Deliverable and the Project as a whole comply with the requirements of this Contract. The Project Representative will have up to 30 calendar days to do this. No formal letter of acceptance will be issued, and passage of the 30 calendar days will imply acceptance, though Regents will issue a letter of noncompliance if a Deliverable or the Project as a whole does not meet the requirements of this Contract. If the Project Representative issues a letter of noncompliance, then the Contractor will have 30 calendar days to correct the problems listed in the noncompliance letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the Project Representative has issued a noncompliance letter, the Deliverables or the Project as a whole will not be accepted until the Project Representative issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30 day period, the Project Representative will issue the acceptance letter within 15 calendar days.

If the Project fails to meet the standard of performance after 90 consecutive calendar days from the start of the performance period, the Contractor will be in default and will not have a cure period. In addition to all

other remedies Regents may have under this Contract, Regents will have the right to request correction or replacement of the relevant portion of the Project.

Article XXIV: Drug-Free Workplace

The Contractor will comply with all applicable state and Federal laws regarding keeping a drug-free workplace. The Contractor will make a good faith effort to ensure that all the Contractor employees, while working on state property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

Article XXV: Ohio Ethics Laws

The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics law, section 102.04 of the Code.

Article XXVI: General

This Contract is the entire agreement between the parties with respect to the subject matter and supersedes any previous statements or agreements, whether oral or written. This Contract will be binding upon and inure to the benefit of the respective successors and assigns of Regents and the Contractor. No amendment or modification of any provision of this Contract will be effective unless it is in writing and signed by both parties.

The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be construed as a waiver or relinquishment of any such term and either party may at any later time demand strict and complete performance by the other party of such a term.

If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity. This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party. The headings used herein are for the sole sake of convenience and will not be used to interpret any section.

THIS SPACE IS INTENTIONAL

PLEASE SEE NEXT PAGE

Date: _____ Date: _____

FTI# or SS#: _____

EXHIBIT I

Scope of Work

- **Deliverables**

- **The Contractor's Fee**

Pay Contractor, upon actual receipt of proper invoices, compensation for the completion of each deliverable as specified in Scope of Work, labeled as Exhibit 1, not to exceed XXXXXX (\$XXXX.00) for services performed in accordance with Article I and Scope of Work, labeled as Exhibit 1, of this CONTRACT.

- **Reimbursable Expenses**

Unless expressly provided for else where in this CONTRACT, Contractor shall be responsible for and assume all office and business expenses that are incurred as a result of the performance of this CONTRACT.

- **Not to Exceed Amount**

It shall be mutually agreed and understood between the Parties that the total amount to be paid by Regents to Contractor under this CONTRACT shall in no event exceed the sum of XXXXXX (\$XXXX.00) unless Contractor receives prior written approval from Regents, or when required, approval of the Controlling Board and so notifies Contractor in writing.

EXHIBIT II

**CONSULTANT INVOICE
(PROFESSIONAL FEES)**

BILL TO: OHIO BOARD OF REGENTS
ATTENTION: FISCAL SERVICES
30 E. BROAD STREET, 36TH FLOOR
COLUMBUS, OHIO 43215-3414

DATE _____
INVOICE # _____

CONSULTANT: _____
ADDRESS: _____

SS#: _____
PHONE #: _____

DATE WORK COMPLETED FROM _____ **TO** _____
DESCRIPTION:

LUMP SUM
TOTAL AMOUNT DUE \$ _____