

## Consultant Agreement

Between the University of West Florida Board of Trustees,  
A public body corporate ("University") and  
\_\_\_\_\_ ("Consultant")

This Agreement is made as of the latest date signed below, between the University of West Florida ("University" or "University") Board of Trustees, a public body corporate (the "University"), and \_\_\_\_\_ (the "Consultant") Federal I.D. No \_\_\_\_\_.

This Agreement shall consist of this Master Agreement, the RFP # \_\_\_\_\_ (the "RFP"), and the Consultant, (\_\_\_\_\_.), response to RFP \_\_\_\_\_ (the "Response") which all are hereby incorporated by reference.

In consideration of the mutual promises contained herein, the University and the Consultant agree as follows:

### **ARTICLE 1 – GOVERNING LAW**

This Agreement is governed by the laws of the state of Florida and any provisions herein, in conflict therewith, shall be void and of no effect. Venue for all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in Escambia County, Florida. This choice of venue is intended by the parties to be mandatory. Each party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section. The federal or state courts of the State of Florida shall have exclusive jurisdiction of any claims arising out of this Agreement.

### **ARTICLE 2 – SERVICES & TERM**

The Consultant's responsibility under this Agreement is to provide professional/ consultation services in the area of :

- X
- X
- X
- X
- X

as more specifically set forth in the "RFP", and the "Response", and the Scope of Services detailed in "Exhibit A".

Services of the Consultant shall be under the general direction of name and title XXXXXX who shall act as the University's representative during the performance of this Agreement.

The Consultant shall commence services on the latest date signed below and continue for an initial Agreement period of X (X) year with the University having the option of renewing for XX (X) additional X (X) year periods. This agreement may be renewed under the same terms and conditions as the original agreement, at the sole and exclusive discretion of the University. The University and Consultant will agree upon renewals in writing.

### **ARTICLE 3 – PAYMENTS TO CONSULTANT**

A. The total amount to be paid by the University under this Agreement for services, materials, and "out of pocket" expenses shall not exceed \$ XXXXXXXXXXXXXXXXXXXX. The Consultant shall notify the University in writing when 90% of the "not to exceed amount" has been reached. The Consultant will bill the University on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "B" for services rendered toward the completion of the Scope of Work. Where incremental billings for partially completed items are permitted, the total incremental billings shall not exceed the percentage of estimated completion as of the billing date.

B. Invoices received from the Consultant pursuant to this Agreement will be reviewed and approved by the initiating University department, indicating that services have been rendered in conformity with the Agreement and then will be sent to the Financial Services Department for payment. Invoices must reference the current purchase order number (if applicable). Invoices will normally be paid within thirty (30) days following the using Department's approval.

C. "Out-of-Pocket" expenses will be reimbursed with written prior approval by the University up to an amount not to exceed \$XXX and in accordance with the list of the types of expenditures eligible for reimbursement. If this Agreement expressly provides that the University will be responsible for paying for Vendor's travel expenses, such travel expenses, meals and lodging shall be paid in accordance with Section 112.061, Florida Statutes. Any expenses in excess of the amounts prescribed by law shall be borne by Vendor.

All requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices, or other documentation acceptable to the University Finance and Accounting Services Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement.

D. All requests for payment will be submitted in sufficient detail for a proper pre-audit and post-audit thereof.

E. In order for both parties herein to close their books and records, the Consultant will clearly state "final invoice" on the Consultant's final/last billing to the University. This certifies that all services have been properly performed and all charges and costs have been invoiced to University. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the Consultant.

F. All payments are to be made in accordance with UWF Board of Trustees Prompt Payment Policy. A Vendor Ombudsman has been established within the University of West Florida. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from the University. The Vendor Ombudsman may be contacted at (850) 474-2636.

#### **ARTICLE 4 – TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Agreement by the Consultant shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement and no higher than those charged the Consultant's most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the University determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside Consultants. The University shall exercise its rights under this "Certificate" within one (1) year following final payment.

#### **ARTICLE 5 – TERMINATION**

##### **Termination of Agreement without Cause**

The University may terminate the Agreement without cause by giving written notice to the other party within 30, 60, 90, 120 days of any annual Agreement anniversary date. Each party will continue and fulfill its obligations already underway at the effective date of the cancellation.

##### **Termination of Agreement for Cause**

The Agreement may be terminated in the event of a breach in the Agreement. The aggrieved party will notify the other party in writing and describe the breached provision. The Consultant will have 10 days from receipt of notice to correct the deficiency. If the deficiency is not corrected within the 10 day allotted period, then the University may terminate the Agreement by providing 10 days written notice of

termination to the Consultant. Termination for cause shall not relieve either party of the responsibility of discharging its duties already begun.

The University shall be reimbursed by the Consultant for paid services that the University did not or will not receive from the Consultant. The Consultant shall be paid for services rendered to the University's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the University the Consultant shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other material related to the terminated work to the University.
- D. Continue and complete all parts of the work that have not been terminated.

#### **ARTICLE 6 – PERSONNEL**

The Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the University.

All of the services required herein shall be performed by the Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions of the Consultant's key personnel as may be listed herein must be made known to the University's representative prior to execution, and written approval granted by the University before said change or substitution can become effective.

The Consultant warrants that skilled and competent personnel to the highest professional standards in the field shall perform all services.

#### **ARTICLE 7 – SUBCONTRACTING**

The University reserves the right to accept in writing the use of a Sub-Contractor or to reject the selection of a particular Sub-Contractor and to inspect all facilities of any Sub-Contractor in order to make a determination as to the capability of the Sub-Contractor to perform properly under this Agreement. The Consultant is encouraged to seek minority and women business enterprises for participation in sub-contracting opportunities. If a Sub-Contractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the Sub-Contractor to complete the work in a timely fashion, the Consultant shall promptly do so, subject to written acceptance of the new Sub-Contractor by the University.

#### **ARTICLE 8 – TAXES**

The University is exempt from the payment of all Federal Tax and State Tax for sales, use or excise taxes. The Consultant shall pay all personal property taxes on leased equipment and all taxes based upon net income. The University will furnish an exemption certificate as appropriate to the Consultant. The Consultant shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the University, nor shall the Consultant be authorized to use the University's Tax Exemption Number in securing such materials. The Consultant shall be responsible for payment of its own and its share of FICA and Social Security benefits with respects to this Agreement.

#### **ARTICLE 9 – AVAILABILITY OF FUNDS**

The University's performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the State and/or the University. The University shall give notice to Consultant of the non-availability of such funds when the University has knowledge thereof. Upon

the Consultant's receipt of such notice, the Consultant is entitled to payment for only those services performed prior to the date of notice.

## **ARTICLE 10 – INSURANCE**

A. The Consultant shall not commence work under this Agreement until it has submitted all insurance required and the University has approved such insurance. The Consultant is required to maintain the insurance for the life of the project plus one (1) year.

B. The Consultant must provide within five calendar days of RFP award notification from the University, an original ACORD Certificate of Insurance evidencing the insurances provided by the Consultant, and signed by the insurance companies or their authorized agents, certifying to the name and address of the party insured, the description of the work covered by such insurance, the insurance policy numbers, the limits of liability of the policies and the dates of their expirations with a further certification from the insurance companies that their policies will not be materially modified, amended, changed, canceled or terminated without thirty (30) days business days prior written notice to the University. Certificate must list the following entities as certificate holder and additional insured: The State of Florida, Florida Board of Governors, University of West Florida Board of Trustees and The University of West Florida.

C. Compliance with the foregoing requirements shall not relieve the Consultant of its liability and obligations under this Agreement.

D. The Consultant shall maintain, during the term of this Agreement, coverage and requirements in accordance with **Appendix A ?**.

## **ARTICLE 11 – INDEMNIFICATION**

The Consultant agrees to indemnify and hold harmless, assume liability for and defend, the University, the State of Florida, the Florida Board of Education, the University of West Florida Board of Trustees and their officers, employees, and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which in any manner arise or are alleged to have arisen, from the negligent acts, omissions or reckless or wrongful conduct of Consultant or Consultant's officers, employees, agents, guests, patrons, licensees, invitees or Consultants in connection with or related to their operations, activities, occupancy or use of the facilities or property of the University in connection with the performance of this Agreement.

The Consultant shall construe nothing in this Agreement as an indemnification of the Consultant. The University warrants and represents that as a sovereign entity, it is self-insured. Consultant and University agree that nothing contained herein shall be construed or interpreted as (a) the consent of the University or the State of Florida or its agents and agencies to be sued; or (b) a waiver of sovereign immunity of the University or the State of Florida.

## **ARTICLE 12 – SUCCESSORS AND ASSIGNS**

The University and the Consultant each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the University nor the Consultant shall assign any right or delegate any duties hereunder nor may it transfer, pledge, surrender, or otherwise encumber or dispose of its interest in any portion of this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the University, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the University and the Consultant.

## **ARTICLE 13 – AFFIRMATIVE ACTION & ADA**

As a condition of this Agreement, the Consultant agrees to comply with Section 202, Executive Order 11246, as amended by Executive Order 11375, and regulations published by the U.S. Department of Labor implementing Section 503 of the Rehabilitation Act of 1973, Public Law 93-112, as amended, which are incorporated herein by reference.

The Consultant agrees to comply with the Americans with Disability Act (ADA) of 1990.

#### **ARTICLE 14 – UNIFORM COMMERCIAL CODE**

The Uniform Commercial Code shall prevail as the basis for contractual obligations between the Consultant and the University for any terms and conditions not specifically stated in this Agreement.

#### **ARTICLE 15 – CONFLICT OF INTEREST**

In accordance with Section 112.3185, Florida Statutes, the Consultant hereby certifies that to the best of his knowledge and belief no individual employed by him or subcontracted by him has an immediate relation to any employee of the University who was directly or indirectly involved in the procurement of said services and would conflict in any manner with the performance of services required hereunder. Violation of this section by Consultant shall be grounds for cancellation of this Agreement by the University.

The Consultant shall promptly notify the University in writing of all potential conflicts of interest for any prospective business association, interest or other circumstance, which may influence or appear to influence the Consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Consultant may undertake and request an opinion of the University as to whether the association, interest or circumstance would, in the opinion of the University, constitute a conflict of interest if entered into by the Consultant. The University agrees to notify the Consultant of its opinion in writing within 30 days of receipt of notification by the Consultant. If, in the opinion of the University, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Consultant, the University shall so state in the notification and the Consultant shall, at his/her option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the University by the Consultant under the terms of this Agreement.

#### **ARTICLE 16 – FORCE MAJEURE/EXCUSABLE DELAYS**

The Consultant shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the Consultant's control and without its fault or negligence. Such causes may include, but are not limited to: acts of God; the University's failures; natural or public health emergencies; labor disputes; freight embargoes; and severe weather conditions.

Upon the Consultant's request, the University shall consider the facts and extent of any failure to perform the work and, if the Consultant's failure to perform was without it or its Sub-Contractor's fault or negligence, the Agreement Schedule and/ or any other affected provision of this Agreement shall be revised accordingly; subject to the University's rights to change, terminate, or stop any or all of the work at any time.

#### **ARTICLE 17 – ARREARS**

The Consultant shall not pledge the University's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

#### **ARTICLE 18 – PUBLIC RECORDS**

If and as requested, the University shall comply with the provisions of Chapter 119, Florida Statutes (Public Record Law). The University may unilaterally cancel this Agreement for refusal by Consultant to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement.

## **ARTICLE 19 – INDEPENDENT CONSULTANT RELATIONSHIP**

The Consultant is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Consultant, and not an employee, agent, or representative of the University. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Consultant's sole direction, supervision, and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant's relationship and the relationship of its employees to the University shall be that of an Independent Consultant and not as employees or agents of the University.

The Consultant does not have the power or authority to bind the University in any promise, agreement, or representation other than specifically provided for in this agreement.

## **ARTICLE 20 – CONTINGENT FEES**

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

## **ARTICLE 21 – ACCESS AND AUDITS**

The Consultant shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least five (5) years after completion of this Agreement. The University shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Consultant's place of business.

## **ARTICLE 22 – EQUAL OPPORTUNITY IN EMPLOYMENT**

Consultant affirms, without reservation, the principles of equal opportunity employment. Consultant will not discriminate against qualified candidates for any unlawful reasons, including race, religion, gender, national origin, age or disability.

## **ARTICLE 23 – ENTIRETY OF CONTRACTUAL AGREEMENT**

The University and the Consultant agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Any amendments, alterations or modifications to this Agreement must be in writing, signed or initialed and approved by all signatories of this Agreement to be effective

## **ARTICLE 24 – ENFORCEMENT COSTS**

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

## **ARTICLE 25 – AUTHORITY TO PRACTICE**

The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at times conduct its business

activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the University upon request.

#### **ARTICLE 26 – SEVERABILITY**

In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, or by an Administrative Law Judge in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof. However, where a breach of this Agreement goes to the whole of this Agreement, this Agreement is unenforceable.

#### **ARTICLE 27 – MODIFICATIONS OF WORK**

The University reserves the right to make changes in the Work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the University's notification of a contemplated change, the Consultant shall (1) if requested by the University, provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the University of any estimated change in the completion date, and (3) advise the University in writing if the contemplated change shall affect the Consultant's ability to meet the completion dates or schedules of this Agreement.

If the University so instructs in writing, the Consultant shall suspend work on that portion of the Work affected by a contemplated change, pending the University's decision to proceed with the change.

If the University elects to make the change, the University shall issue an Amendment to the Agreement or Change Order and the Consultant shall not commence work on any such change until such written Amendment or Change Order has been issued and signed by each of the parties.

#### **ARTICLE 28 – NOTICE**

All notices required in this Agreement shall be sent in writing by FAX or a delivery service requiring evidence of receipt of delivery and if sent to the University shall be mailed to:

University of West Florida  
**Buyer Name**  
 Procurement & Contracts  
 11000 University Parkway  
 Pensacola, FL 32514  
 Fax # 850-474-2090

Notices sent to the Consultant shall be mailed to:

XXXXXX  
 XXXXXX  
 XXXXXX

#### **ARTICLE 29 – PUBLIC ENTITY CRIME**

In accordance with Fla. Stat. §287.133(2) (a), any person or affiliate who has been placed on the Convicted Contractor List following a conviction for a Public Entity Crime, may not participate in bids or proposals, and may not perform work or transact business with any public entity in excess of the threshold amount stated in Fla. Stat. §287.017 (Category Two) for thirty-six months from the date first placed on the list.

#### **ARTICLE 30 – ASSIGNMENT OF ANTITRUST CLAIMS**

By signature below, Consultant hereby conveys, sells, assigns, and transfers to the University all rights, title and interest in and all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the particular goods or services purchased or acquired by the University pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the latest date signed below.

**University of West Florida  
Board of Trustees, a Public Body  
Corporate**  
By:

**(Consultant Name)**

By:

\_\_\_\_\_  
Authorized Signature\*                      Date  
Title

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name (please print)

As Witnessed By,

As Witnessed By,

\_\_\_\_\_

\_\_\_\_\_

*\*If total value of agreement is <\$1M, agreement may be signed by Contracts or Procurement Manager. If \$1M or more, signature of the Vice President for Administrative Services is required. **Delete note before finalizing agreement.***