

ARIZONA BOARD OF REGENTS

AGREEMENT FOR INDEPENDENT CONTRACTOR CONSULTANT SERVICES

DATE:

PARTIES: **THE ARIZONA BOARD OF REGENTS**, for and on behalf of

ARIZONA STATE UNIVERSITY

(Hereinafter referred to as ("The UNIVERSITY"); and

(hereinafter referred to as ("**CONSULTANT**"))

AGREEMENT

I

The UNIVERSITY desires to retain CONSULTANT, and CONSULTANT desires to provide services to the UNIVERSITY, in his/her capacity as an independent contractor, upon the terms and conditions set forth in this Agreement.

II

CONSULTANT shall provide those services set forth on Exhibit A attached to this Agreement.

III

The term of this Agreement shall commence on _____, 20__, and shall conclude on _____, 20__, unless sooner terminated by either party. The UNIVERSITY may terminate this Agreement with or without cause upon ten (10) days written notice to the CONSULTANT. If this Agreement is terminated the UNIVERSITY shall have no further obligations other than payment for services already rendered and for expenses previously incurred.

IV

The UNIVERSITY agrees to pay CONSULTANT, as consideration for performance of the consulting services, the sums as set forth in Exhibit A.

V

The UNIVERSITY agrees to reimburse CONSULTANT for expenses as set forth and outlined in Exhibit A.

VI

For all purposes under the terms of this Contract, CONSULTANT shall be an independent contractor, and not an officer or employee of the UNIVERSITY. The UNIVERSITY shall provide no employee benefits, including but not limited to Worker's Compensation coverage, regularly afforded to staff, faculty, administrative or professional employees. In performance of services hereunder, CONSULTANT shall determine his/her necessary hours of work. CONSULTANT shall provide whatever tools, equipment, vehicles and supplies CONSULTANT may determine to be necessary in performance of services hereunder. CONSULTANT may establish offices in such locations within or outside Arizona, as CONSULTANT may determine to be necessary for the performance of services hereunder, and shall be responsible for all expenses of operation of said office, including expenses incurred in hiring employees and assistants to CONSULTANT.

VII

The conduct and control of work under this Contract lies solely with CONSULTANT, and the UNIVERSITY is interested only in final results to be achieved. The UNIVERSITY shall be permitted to retain other consultants performing the same or similar tasks, and CONSULTANT shall be permitted to provide services to other parties, consistent with CONSULTANT's obligation to complete the services undertaken pursuant to the terms of this Agreement.

VIII

CONSULTANT shall provide such interim written reports concerning the performance of services and research under this Contract as the UNIVERSITY may request in writing, and upon expiration or other termination of the Agreement shall at the request of the UNIVERSITY provide a written report to the UNIVERSITY setting forth the results of the work performed hereunder.

IX

All reports, drawings and other work products produced by CONSULTANT as a part of the services rendered under this Agreement shall be provided to and be the sole property of the UNIVERSITY. CONSULTANT shall not release such work product or other information obtained or produced pursuant to this Agreement without the prior written consent of the UNIVERSITY.

X

The parties agree to comply with all applicable laws, rules regulations and executive orders relating to nondiscrimination, equal employment opportunity, immigration, affirmative action and the Americans With Disabilities Act.

XI

The parties agree that this Agreement may be cancelled for conflict of interest in accordance with A.R.S. Statute 38-511, *Cancellation of political subdivision and state contracts; definition.*

XII

The parties agree to submit all disputes arising hereunder to the claims resolution procedures of the Arizona Board of Regents Procurement Policies Section 3-809C, *Contract Claims and Controversies.*

XIII

CONSULTANT and subcontractors shall procure and maintain until all of CONSULTANT's obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, the CONSULTANT's agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in the Agreement. The UNIVERSITY and/or the State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the CONSULTANT from liabilities that might arise out of the performance of the work under this Agreement by the CONSULTANT, the CONSULTANT's agents, representatives, employees, or subcontractors, and CONSULTANT is free to purchase additional insurance.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: CONSULTANT shall provide coverage with limits of liability not less than those stated below:

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: **“The State of Arizona, its departments, agencies, boards, commissions, universities, and its officers, officials, agents, and employees, shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CONSULTANT.”**

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities, and its officers, officials, agents, and employees, for losses arising from work performed by or on behalf of the CONSULTANT.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

- Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: **“The State of Arizona, its departments, agencies, boards, commissions, universities, and its officers, officials, agents, and employees, shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CONSULTANT, involving vehicles owned, leased, hired, or borrowed by the CONSULTANT.”**

3. Worker’s Compensation and Employers’ Liability

- Workers Compensation Statutory
- Employers Liability
 - Each Accident \$ 500,000
 - Disease – Each Employee \$ 500,000
 - Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities, and its officers, officials, agents, and employees, for losses arising from work performed by or on behalf of the CONSULTANT.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. **Professional Liability (Errors and Omissions Liability)**

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.
- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities, and its officers, officials, agents, and employees, for losses arising from work performed by or on behalf of the CONSULTANT.
- c. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this Agreement.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

- 1. The State of Arizona, its departments, agencies, boards, commissions, universities, and its officers, officials, agents, and employees, wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the CONSULTANT, even if those limits of liability are in excess of those required by this Agreement.
- 2. The CONSULTANT's insurance coverage shall be primary insurance with respect to all other available sources.
- 3. Coverage provided by the CONSULTANT shall not be limited to the

liability assumed under the indemnification provisions of this Agreement.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the UNIVERSITY. Such notice shall be sent directly to Director of Purchasing and Business Services, Insurance, Arizona State University, PO Box 875212, Tempe, Arizona, 85287-5212 and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less than A-VII (A minus seven). The State of Arizona in no way warrants that the above required minimum insurer rating is sufficient to protect the CONSULTANT from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** CONSULTANT shall furnish the UNIVERSITY with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the UNIVERSITY before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Agreement shall be sent directly to Director of Purchasing and Business Services, Insurance, Arizona State University, PO Box 875212, Tempe, Arizona, 85287-5212. The UNIVERSITY project or purchase order number and project description shall be noted on the certificate of insurance. The State of Arizona and/or the UNIVERSITY reserve the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

F. **SUBCONTRACTORS:** CONSULTANT's certificate(s) shall include all subcontractors as insureds under its policies or CONSULTANT shall furnish to the UNIVERSITY separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL.** The insurance requirements in this Agreement are the standard insurance requirements of the UNIVERSITY as an entity within the State of Arizona. Any modification or variation from the insurance requirements in this Agreement will require the approval of the State of Arizona, Department of Administration, Risk Management Section, whose decision shall be final. The

UNIVERSITY will not forward any request for modification or variation without a complete and significant justification.

XIV

CONSULTANT shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities, and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of CONSULTANT or any of the CONSULTANT's owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such CONSULTANT to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by CONSULTANT from and against any and all claims. It is agreed that CONSULTANT will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the CONSULTANT agrees to waive all rights of subrogation against the UNIVERSITY and/or the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the CONSULTANT for the UNIVERSITY and/or the State of Arizona.

XV

This Agreement may be cancelled without any further obligation on the part of THE ARIZONA BOARD OF REGENTS and the UNIVERSITY in the event that sufficient appropriated funding is unavailable to assure full performance of its terms. CONSULTANT shall be notified in writing of any such non-appropriation at the earliest opportunity.

XVI

All books, accounts, reports, files and other records relating to this Agreement shall be maintained and shall be subject at all reasonable times to inspection and audit by the UNIVERSITY for five (5) years after completion of this Agreement. Such records shall be produced at a place designated by the UNIVERSITY, upon reasonable notice to the CONSULTANT.

XVII

Notice is provided of Sections 12-1518, *State and political subdivisions; use of arbitration*, and 12-133, *Arbitration of claims; agreement of reference; arbitration award; powers of arbitrators; compensation of arbitrators; appeals; deposits; costs*, Arizona Revised Statutes.

XVIII

The UNIVERSITY and CONSULTANT recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by the UNIVERSITY. Therefore, the CONSULTANT hereby assigns to the UNIVERSITY any and all claims for such overcharges.

XIX

Failure by CONSULTANT to perform as specifically provided herein shall be an event of default permitting UNIVERSITY to pursue all remedies affordable by law or in equity, including termination of this Agreement.

XX

CONSULTANT shall not assign this Agreement without the prior written consent of UNIVERSITY.

XXI

This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective. This Agreement may not be modified or amended except by written instrument signed by both parties. This Agreement shall be governed by the laws of Arizona, the courts of which shall have jurisdiction over its subject matter.

The individual signing below on behalf of CONSULTANT hereby represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT and that this Agreement is binding upon CONSULTANT in accordance with its terms.

WHEREFORE, the parties have executed this Agreement the date set forth above.

THE ARIZONA BOARD OF REGENTS
for and on behalf of

ARIZONA STATE UNIVERSITY
(UNIVERSITY)

(CONSULTANT)

By _____

By _____

Title Director of Purchasing

Title _____

EXHIBIT A

TO

AGREEMENT FOR INDEPENDENT CONTRACTOR CONSULTANT SERVICES

I SERVICES:

II FEES FOR SERVICES:

The UNIVERSITY agrees to pay CONSULTANT, as consideration for performance of the consulting services as set forth in the preceding paragraph, the total sum of \$_____, payable as follows:

III REIMBURSEMENT FOR EXPENSES:

The UNIVERSITY AGREES TO REIMBURSE CONSULTANT up to a maximum of \$_____, for expenses as follows:

Prior approval is required for any individual expenses in excess of \$_____. Each request for reimbursement must be itemized and accompanied by receipts. Reimbursement for auto travel will be made at the rate permitted State employees.