

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND ERNST & YOUNG LLP

This Services Agreement (“Agreement”) is entered into and effective as of December 7, 2015 (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “TAMUS”), an agency of the state of Texas, and Ernst & Young LLP (hereafter referred to as “PROVIDER”). TAMUS and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively.

TAMUS and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

PROVIDER will provide services to TAMUS for strategic planning, as further described in Exhibit A, attached hereto.

2. TERM OF THE AGREEMENT

The Term of this Agreement shall begin as of the Effective Date, and will end upon successful completion of the scope of work.

3. PAYMENT TERMS

- A. TAMUS shall compensate the PROVIDER for the services as described in Exhibit A. Payment for services will not exceed \$325,000.00 and shall be inclusive of all administrative, travel, lodging and meal expenses. Exhibit B, attached hereto, includes the detailed cost and payment schedule.
- B. PROVIDER shall invoice TAMUS according to the schedule in Exhibit B for the services described in Exhibit A. Payment will be made to PROVIDER upon approval of such invoices by TAMUS. It is the policy of the state of Texas to make payment on properly prepared and submitted invoices within thirty (30) days of the later of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment. A single invoicing format may be submitted.
- C. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to TAMUS a Direct Deposit Authorization form prior to the payment request. The form can be accessed at: <http://www.window.state.tx.us/taxinfo/taxforms/74-176.pdf>.
- D. All invoices must reference the TAMUS purchase order number (which will be provided to PROVIDER within 15 days of the execution of this Agreement) and

description of services provided to include but not limited to time, deliverables, and activities.

- E. Invoices are to be sent to TAMUS Budgets and Accounting via email at systemvouchers@tamus.edu.

4. TERMINATION

- A. TAMUS may terminate this Agreement at any time upon fifteen (15) days prior notice to PROVIDER.

5. PUBLIC INFORMATION

- A. PROVIDER acknowledges that TAMUS is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon TAMUS's written request, PROVIDER will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to TAMUS in a non-proprietary format acceptable to TAMUS. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which TAMUS has a right of access. TAMUS may incorporate into documents that it intends to disclose information contained in reports prepared by PROVIDER pursuant to this Agreement provided that, unless required by law, TAMUS shall assume sole responsibility for the contents of those documents and not refer to PROVIDER or any other member of the global network of Ernst & Young firms ("EY Firms") in connection with them. In the event TAMUS is required to disclose any report prepared by PROVIDER pursuant to this Agreement or otherwise refer to PROVIDER in any publicly disclosed document, TAMUS shall disclose such Reports or documents in precisely the form provided by us to you, including any disclaimers, caveats, assumptions, limitations or similar provisions contained therein.
- C. PROVIDER acknowledges that TAMUS is required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

6. DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMUS and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this

Chapter to Billy Hamilton, Executive Vice Chancellor and Chief Financial Officer for TAMUS, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

7. MISCELLANEOUS

- A. **Indemnification.** PROVIDER agrees to indemnify and hold harmless TAMUS from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER's gross negligence or willful acts under this Agreement.
- B. **Limitation of Liability.** TAMUS may not recover from PROVIDER, in contract or tort, under statute or otherwise, aggregate damages in excess of the fees actually paid for the services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the services hereunder. This limitation will not apply to losses caused by PROVIDER's fraud or willful misconduct or to the extent prohibited by applicable law or professional regulations. TAMUS agrees to this section only to the extent permitted by the Constitution and laws of the state of Texas.
- C. **Sole Recourse.** TAMUS may not make a claim or bring proceedings relating to the services or otherwise under this Agreement against any other member of the global network of Ernst & Young firms ("EY Firms") or PROVIDER's or any other EY Firm's its subcontractors, members, shareholders, directors, officers, partners, principals or employees ("EY Persons"). TAMUS shall make any claim or bring proceedings only against PROVIDER.
- D. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of TAMUS. PROVIDER will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. PROVIDER shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of TAMUS relative to conduct on its premises.
- E. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant,

loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

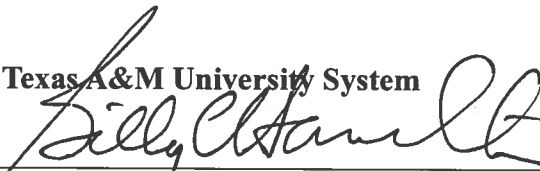
- F. Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- G. Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TAMUS from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- H. Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- I. State Auditor’s Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- J. Entire Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- K. Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

- L. Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- M. Non-Assignment.** Neither Party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party.
- N. Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
- O. Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- P. Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMUS shall be in the county in which the primary office of the chief executive officer of TAMUS is located, which is Brazos County, Texas.
- Q. Non-Waiver.** PROVIDER expressly acknowledges that TAMUS is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMUS of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- R. Insurance.** See Exhibit C.
- S. Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TAMUS and PROVIDER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

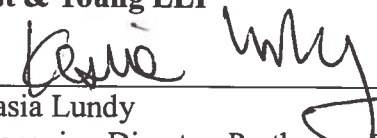
TAMUS: The Texas A&M University System
301 Tarrow St., Suite 361
College Station, Texas 77840
Attention: Jeff Zimmermann
Phone: (979) 458-6410
Fax: (979) 458-6250
E-mail: jzimmermann@tamus.edu

PROVIDER: Ernst & Young LLP
50 Rowes Warf
Boston, MA 02110
Attention: Kesia Lundy
Phone: (617) 478-9328
Fax: (617) 478-2555
Email: kasia.lundy@parthenon.ey.com

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

The Texas A&M University System
By 
Billy Hamilton
Executive Vice Chancellor and Chief Financial Officer

2/12/16
Date

Ernst & Young LLP
By 
Kasia Lundy
Managing Director, Parthenon EY

2/12/16
Date

EXHIBIT A – SCOPE OF WORK

The project will be conducted in three phases:

- Phase 1: Input Collection (Dec 7-22, 2015)
- Phase 2: Facilitation of Strategic Planning Process (Jan 4-Mar 31, 2016)
- Phase 3: Strategic Plan Development (Apr 1-May20, 2016)

Phase 1: Input Collection (Dec 7-22, 2015)

Objectives:

- Finalize approach and materials for retreat
- Identify areas of potential analysis

Activities:

- Internal Data Analysis:
 - Collect and synthesize available “unit” plans and identify points of agreement/ disagreement
 - Collect other relevant data (through System Office staff)
- Targeted Data Collection and Analysis:
 - Begin targeted data collection and analysis (e.g., numbers of graduates, campus capacity, and addressing the “How much of the target can we take on” issue), leveraging everything that the System office has already done
- Interviews and Short Survey:
 - Begin to interview members of the Steering Planning Committee (SPC) and any others who will be attending the retreat – leverage these interviews to identify big themes and points of agreement/ disagreement. *NOTE: We are assuming up to 20 calls*
 - Develop brief survey to SPC members and regents to probe on key questions around vision and strategic objectives
- Retreat Preparation:
 - Prepare outline for retreat
 - Hold retreat planning call with representative of BOR/SPC

Deliverables:

- Approach to retreat finalized
- Outline of materials for retreat developed

Phase 2: Facilitation of Strategic Planning Process (Jan 4-Mar 31, 2016)

Objectives:

- Facilitate two strategic planning retreats with the Strategic Planning Committee
- Draft key components of the recommended strategic plan

Activities:

- Interviews and Survey:
 - Finalize interviews
 - Send out survey to Strategic Planning Committee members
 - Collect and analyze survey results
 - Synthesize key themes from interviews and survey, and incorporate into retreat materials
- Retreat Preparation:
 - Prepare retreat materials
 - Review with System Office staff, as appropriate, in advance of the retreat
 - Assign “homework”/thought exercises (advance questions) to retreat participants and distribute these before each retreat – by Friday, January 8, 2016 and by Friday, February 26, 2016
- Retreat Facilitation:
 - Facilitate two overnight retreats (January 13-14 and March 1-2)
 - Synthesize key themes from each retreat and share these themes and proposed next steps with the SPC and the Project Coordinator
- Targeted Analysis:
 - Continue additional, targeted analysis as relevant to questions raised during the retreats
- Targeted Follow-up with BOR/System Office/ Institutions (as needed):
 - Planning sessions with System Office representatives to review emerging priorities and goals, and to plan ahead
 - Update to BOR at the February 10-12 meeting
 - One-on-one calls with SPC members as needed prior to second retreat in March, to prepare them appropriately for the second retreat, determine roles, etc.

Deliverables:

- Draft of recommended strategic plan components (vision, mission, goals, strategies)

Phase 3: Strategic Plan Development (Apr 1-May20, 2016)

Objectives:

- Finalize recommended strategic plan

Activities:

- Planning Sessions:
 - Conduct working sessions with System Office representatives to review changes coming out of second retreat and out of any System meetings with Institutions, and to prepare for BOR session in April
- Feedback from Institutions:
 - Rely on System Office staff to solicit input from Institutions on the draft strategic plan
 - Conduct follow-up calls with selected Institutions (e.g., those that are part of the SPC) if requested by the System Office
- Strategic Plan Iteration:
 - Coming out of second retreat, refine draft of vision, mission, goals/ imperatives, key strategies, and ways to measure success
 - Review draft plan and feedback at the April meeting of the Board of Regents
 - Incorporate feedback from BOR and Institutions, as appropriate
 - Review amended plan with the SPC (we recommend an additional meeting in mid to late May, if possible)
- Strategic Plan Finalization:
 - Finalize strategic plan recommendations and submit to the SPC and BOR

Deliverables:

- Strategic plan recommendations document

EXHIBIT B – COST/PAYMENT SCHEDULE

Milestone 1: Strategic Planning Retreat, Jan. 13-14 - \$108,000.00

Key Activities

- Collect and synthesize available campus & agency plans and aggregate key themes
- Begin targeted data collection and analysis, leveraging everything that the System office has already done
- Conduct interviews with Strategic Planning Committee (SPC) members to identify key themes and points of agreement/disagreement
- Develop and send a brief survey to SPC members
- Prepare retreat agenda and materials for the retreat
- Lead and facilitate the Strategic Planning Retreat

Key Deliverables

- Finalized agenda for Retreat
- Finalized presentation for Retreat covering: current state assessment, key themes from SPC member interviews / survey
- Facilitation of Strategic Planning Retreat

Milestone 2: Strategic Planning Retreat, March 1-2 - \$108,000.00

Key Activities

- Synthesize key themes from first retreat and share these themes and proposed next steps with the SPC and TAMUS Project Coordinator
- Continue additional, targeted analysis and research, as relevant to questions raised during the retreats
- Prepare retreat agenda and materials for the retreat
- Lead and facilitate the Strategic Planning Retreat

Key Deliverables

- Finalized agenda and materials for Retreat
- Facilitation of second Strategic Planning Retreat

Milestone 3: Strategic Plan Development, mid-May - \$109,000.00

Key Activities

- Coming out of second Retreat, refine draft of vision, mission, goals/imperatives, key strategies, and ways to measure success
- Review draft plan and feedback at the April meeting of the Board of Regents
- Incorporate feedback from BOR and Institutions, as appropriate

Key Deliverables

- Strategic plan recommendations document, submitted to the BOR for approval

EXHIBIT C – INSURANCE

INSURANCE: The PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to TAMUS. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to TAMUS at least ten days before the effective date of the cancellation.

Insurance:

Coverage

Limit

1. **Worker’s Compensation**

Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit

Workers’ Compensation policy must include under Item 3.A. on the information page of the workers’ compensation policy the state in which work is to be performed for TAMUS. Workers’ compensation insurance is required, and no “alternative” forms of insurance will be permitted

2. **Automobile Liability**

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

Additional Endorsements

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and the PROVIDER as additional insured’s; provided that this requirement may be satisfied by means of a blanket endorsement.

3. **Commercial General Liability**

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000

Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures PROVIDER's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

4. PROVIDER will deliver to TAMUS:

Evidence of insurance verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by PROVIDER under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and TAMUS as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER; provided that this requirement may be satisfied by means of a blanket endorsement. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and TAMUS for claims involving PROVIDER's sole negligence. No policy will be canceled unless PROVIDER provides written notice to TAMUS at least ten days before the effective date of the cancellation.

Any deductible or self-insured retention must be declared to and approved by TAMUS prior to the performance of any services by PROVIDER under this Agreement. PROVIDER is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following TAMUS contact:

The Texas A&M University System
301 Tarrow Street
College Station, TX 77840
Attn: Jeff Zimmermann
Facsimile Number: 979-458-6101
Email Address: jzimmermann@tamus.edu

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by TAMUS in writing.