

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 upon final execution of this Agreement (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 work with TAMUS to provide a regional workforce assessment as outlined in RFP01 AIAG-17-017. The services included (but not limited to) in the scope of this Agreement are listed in Exhibit A, attached hereto.

2. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin upon the final execution of the Agreement and will end upon successful completion of the scope of work.

3. PAYMENT TERMS

- A. The payment rate schedule is attached as Exhibit B and made a part of this Agreement.
- B. TAMUS shall compensate the PROVIDER for the services as described in Exhibit A. Payment for services will not exceed \$225,000.00 and shall be inclusive of all administrative, travel, lodging, and meal expenses. Exhibit B, attached hereto, includes the detailed cost and payment schedule.
- C. 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 invoice by TAMUS. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter 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.
- D. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to TAMUS a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at;
<https://www.tamus.edu/business/budgets-and-accounting/accounting/general/> .
- E. 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.

4. **DEFAULT AND TERMINATION**

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, TAMUS may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of TAMUS.
- B. 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.
- 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. **INSURANCE**

- A. This process is described in Exhibit C, attached hereto.

8. **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 Firm") or PROVIDER's or any other EY Firm's subcontractors, members, shareholders, directors, officers, partners, principals or employees. 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. TAMUS 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.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TAMUS.
- N. **HUB Subcontracting Plan.** If a subcontractor will be used to provide any commodity or service as part of the scope on a specific assignment, the PROVIDER will be required to make a good faith effort and complete the state of Texas HSP found at <http://www.tamus.edu/business/facilities-planning-construction/forms-guidelines-wage-rates/>. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be expected to make a good faith effort according to the HSP instructions.
- In the event that you determine you will be using a subcontractor, please contact Mr. Jeff Zimmermann from the A&M System's HUB Program at (979) 458-6410 or jjzimmermann@tamus.edu for assistance in determining available HUB subcontractors and proper completion of the HSP.
- O. **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.
- P. **Loss of Funding.** Performance by TAMUS under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TAMUS will issue written notice to PROVIDER and TAMUS may terminate this

Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of TAMUS.

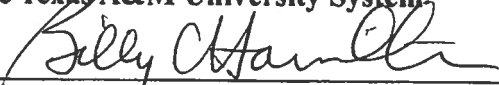
- Q. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- R. **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.
- S. **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.
- T. **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 Raves Wharf
Boston, MA 02110
Attention: Kasia Lundy
Phone: (617) 478-6328
Email: kasia.lundy@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
Exec Vice Chancellor & Chief Financial Officer

3-28-17
Date

Ernst & Young, LLP

By 
Kasia Lundy
Managing Director, Parthenon-EY

3/27/17
Date

EXHIBIT A – SCOPE

The objective of this work is understood to be identifying specific workforce needs in the eight counties region centered around Brazos County. This will be achieved through an analysis of existing secondary workforce data and reports in combination with primary research of employers important to the eight counties region.

The work will be broken out into three phases:

- 1) **Phase 1: Planning (March 27 – 31)** – In this phase, Provider will engage TAMUS to set up key meetings, milestones, and become acquainted with key stakeholders in a kick-off meeting. In this meeting, Provider will validate the key sectors of workforce need according to existing research (e.g. Texas Workforce Commission reports) and validate a list of top employers related to these sectors. Provider will also validate an initial concept of the employer survey.
- 2) **Phase 2: Primary Research (April 3-28)** – In this phase, Provider will conduct primary research (online employer survey; one-on-one calls with most of the top 15 employers in the eight counties region) to analyze the key questions of the project around the specific workforce needs in the eight county region, the prevailing wages for the identified skill sets, and the marketing methods typically used by regional industries to attract the needed skill sets.
- 3) **Phase 3: Refine and Revise (May 1-5)** – In this phase, Provider will revise the draft report according to comments from the TAMUS primary representative and prepare for final submission.

Phase 1: Planning (1 week)

Key Provider Activities

- Work with TAMUS to determine the project management structure (steering committee members, key meeting dates, etc.).
- Meet with steering committee members to discuss reaction to the most pressing regional workforce needs assessments.
- Validate target employer list and engagement method; resolve contact method.
- Schedule key meetings and project update calls throughout the course of the project.
- Compile employer contact list and draft reach-out materials.
- Draft employer survey concept for review.
- Conduct kick-off meeting.
- Review scope and methodologies employed with the TAMUS primary representative.

Phase 2: Primary Research (4 weeks)

Key Questions

- **Workforce needs in the eight county region in 2017, 2020, and 2022**
 - What are employers anticipating for hires in these years?
 - What are the anticipated annual training projections for these years? Is the training expected to be company driven or driven through individuals?
 - What are the specific skill sets required for both hiring and training?
 - What is the urgency of the different skills (critical, urgent, on-going, etc.)?
 - How would the required skills be segmented by level of training (e.g., high school diploma, simple skills, certificate credential, B.A. degree)?
 - How likely is the predicted outcome?
- **Recruiting**
 - What recruiting methods have employers used to attract the needed workforce?
 - Which have proven to be successful and why?
- **Other Opportunities**
 - What other opportunities might TAMUS have through RELLIS to support the workforce needs of Texas?

Key Provider Activities

- Collect and analyze labor market data reports agreed upon in Phase 1 to predict future workforce needs and salary changes
- Analyze stated employer needs through survey:
 - Write survey for all eight-counties employers and validate questions with the RELLIS project manager.
 - Launch, manage, and analyze survey responses.
 - Triangulate perspectives with available secondary research reports.
- Analyze stated employer needs through interviews
 - Schedule and conduct ~10 cross-sector employer interviews on their workforce and skilling needs, based on relative size of skilled labor employers in the eight counties region. Include contacts within the Bryan-College Station Chamber of Commerce.
 - Assess appetite for alternative skill training options
- Triangulate perspectives with available secondary research reports
- Flag other opportunities TAMUS might have though RELLIS to support the workforce needs of Texas.

Deliverables:

- Draft employer survey report.
- Draft comparative analysis of employer vs. secondary information.

Phase 3: Refine and Revise (1 week)

Phase 3 will commence after draft report is reviewed. Its main goal will be to refine and revise the draft report based on comments from the TAMUS primary representative.

Key Questions

- How can we incorporate the feedback from the TAMUS primary representative and/or steering committee?
- What additional analyses might be required for this report?

Key Activities

- Conduct additional analyses, as needed.
- Incorporate feedback from the TAMUS primary representative.
- Submit final report in electronic and hardcopy forms.

Deliverables

- Final Report

EXHIBIT B – PRICING

1. Professional Fees

Professional fees are directly affected by the length of the engagement and the level of staffing, but are provided on a fixed price basis. Total professional fees for the project are \$200,000 for the six week project.

2. Expenses

Project-related expenses will be billed in conjunction with professional fees. These expenses are related to primary research, travel, and material production/graphics support. Expenses are calculated to be 12-15% of total fees, and as such are \$25,000. Approval for any unusual or extraordinary expense over and above this amount must be approved in advance in writing.

3. Total Aggregate Cost

Additional Cost	Explanation	Contract Rate
Professional Fees	<ul style="list-style-type: none">Fixed fee price for the agreed upon deliverables of the project, estimated to take place with a team of two managing directors and three team members over the course of approximately six weeks..	\$200,000 (Fixed Fee)
Primary Research	<ul style="list-style-type: none">Employer or general population interviews and/or survey costs	\$25,000
Travel Costs	<ul style="list-style-type: none">Airfare, lodging, meals, ground transport	
Materials	<ul style="list-style-type: none">Materials production (paper, graphics support)	
Total Professional Fees and Expenses		\$225,000.00

4. Invoice Schedule

Total professional fees and expenses will be billed at the conclusion of the project in one invoice.

EXHIBIT C – INSURANCE

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:

<u>Coverage</u>	<u>Limit</u>
A. <u>Worker’s Compensation</u>	
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

B. **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 as additional insured’s.))

C. <u>Commercial General Liability</u>	
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

D. Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of PROVIDER and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, PROVIDER agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (2) years after the expiration of cancellation of this Agreement.

E. PROVIDER will deliver to TAMUS:

Evidence of insurance on a Texas Department of Insurance approved certificate form 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 on a Texas Department of Insurance approved certificate form 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 and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER; provided, however, that this requirement may be satisfied by means of a blanker 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 and The Texas A&M University System. No policy will be canceled without unconditional written notice to TAMUS at least ten days before the effective date of the cancellation. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to TAMUS ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this section.

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 in Section 8R.

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, except as may be noted.