

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND WHITNEY WHITMIRE CONSULTING, LLC

This Services Agreement (“Agreement”) is entered into and effective September 1, 2019 (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “A&M System”), an agency of the state of Texas, and Whitney Whitmire Consulting, LLC (hereafter referred to as “PROVIDER”). A&M System and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

A&M System and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

PROVIDER will work with A&M System to provide strategic advice and counsel as it relates to the enhancement of System programs and the System’s interactions with state and local governmental agencies in the development and implementation of such programs, including but not limited to programs of the Texas A&M Transportation Institute.

2. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin September 1, 2019 and will extend for one (1) year. This Agreement can be extended for one (1) additional one (1) year terms upon written agreement of both parties. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by A&M System and negotiated in writing with the PROVIDER.

3. PAYMENT TERMS

- A. For the services rendered under this Agreement, A&M System shall pay PROVIDER \$5,000 per month. This amount does not include payment for reasonable and necessary expenses, including travel. Reimbursement for such reasonably and necessary expense shall not exceed \$5,000 for the then current term of the Agreement.
- B. PROVIDER can invoice A&M System monthly for the Scope of Work identified in Section 1. For reimbursement of travel expenses, PROVIDER’S invoice(s) must include supporting documents. Payment will be made to PROVIDER upon approval of such invoice by A&M System. 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.
- C. Business-related travel, lodging and/or meal expenses will be reimbursed by A&M System according to the State of Texas rates, rules, and regulations (<http://www.window.state.tx.us/procurement/prog/stmp/>). PROVIDER is required to submit all travel receipts when requesting reimbursement. Under no circumstance will the PROVIDER be reimbursed for alcohol purchases. State travel rates are subject to change without notice and will be adjusted accordingly. Mileage rates will be calculated from point-to-point (PROVIDER’s place of business to job site) using the State of Texas

mileage. Should the contract be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.

- D. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to A&M System 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 A&M System 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, A&M System 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 A&M System.
- B. A&M System may terminate this Agreement at any time upon thirty (30) days prior notice to PROVIDER.

5. PUBLIC INFORMATION

- A. PROVIDER acknowledges that A&M System 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 A&M System'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 A&M System in a non-proprietary format acceptable to A&M System. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which A&M System has a right of access.
- C. PROVIDER acknowledges that A&M System may be 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 A&M System 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, Deputy

Chancellor and Chief Financial Officer for A&M System, 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 A&M System from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER's negligent or willful errors or omissions under this Agreement.**
- B. **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 A&M System. A&M System 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 A&M System relative to conduct on its premises.
- C. **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."
- D. **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.
- E. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits A&M System 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.
- F. **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.
- G. **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.

- H. **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.
- I. **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.
- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- K. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M System.
- L. **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 <https://www.tamus.edu/business/hub-procurement/hub-programs-3/system-offices-hub-program/>. 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 jzimmermann@tamus.edu for assistance in determining available HUB subcontractors and proper completion of the HSP.

- M. **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.
- N. **Loss of Funding.** Performance by A&M System 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, A&M System will issue written notice to PROVIDER and A&M System may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of A&M System.
- 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 A&M System shall be in the county in which the primary office of the chief executive officer of A&M System is located, which is Brazos County, Texas.
- Q. **Non-Waiver.** PROVIDER expressly acknowledges that A&M System is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- R. **Conflict of Interest.** By executing this Agreement, PROVIDER and each person signing on behalf of PROVIDER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
- S. **Prohibition on Contracts with Companies Boycotting Israel.** If PROVIDER is a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit, by executing this Agreement, the PROVIDER certifies it does not and will not, during the performance of this contract, boycott Israel. PROVIDER acknowledges this Agreement may be terminated if this certification is or becomes inaccurate.
- T. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges this Agreement may be terminated if this certification is or becomes inaccurate.
- U. **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. A&M System 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:

A&M System: The Texas A&M University System
 301 Tarrow St., Suite 273
 College Station, Texas 77840
 Attention: Jeff Zimmermann
 Phone: (979) 458-6410
 Fax: (979) 458-6250
 E-mail: jzimmermann@tamus.edu

PROVIDER: Whitney Whitmire Consulting, LLC
1063 W. 41st St.
Houston, TX 77018
Phone: (832) 722-5294
Email: whitneywhitmire@gmail.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

DocuSigned by:
By *Jeff Zimmermann*
Jeff Zimmermann
Director, Procurement & Business Services

7/12/2019 | 09:14:12 CDT
Date

Whitney Whitmire Consulting, LLC

DocuSigned by:
By *Whitney Whitmire*
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7/19/2019 | 16:21:58 CDT
Date