EDUCATE · DISCOVER · IMPACT

1/12/16

ABOR REQUEST FOR PROPOSAL NO. 2016001

ARIZONA BOARD OF REGENTS
REQUEST FOR PROFESSIONAL REAL ESTATE CONSULTING SERVICES

The Arizona Board of Regents (ABOR) invites proposals to provide professional real estate consulting services as described below.

1. Each proposer must submit a total of 5 copies of their proposal no later than **FEBRUARY 8, 2016 at 3 p.m.**, to Arizona Board of Regents, 2020 N. Central Ave., Suite 230, Phoenix, AZ 85004, ATTENTION: Mary Adelman at which time proposals will be publicly opened. **THE OUTSIDE OF THE PROPOSAL MUST BE CLEARLY MARKED WITH "SEALED PROPOSAL FOR REAL ESTATE CONSULTING SERVICES."**

2. The Projected Timetable and Request For Proposal (RFP) are attached.

3. From the date this RFP is issued until the award of the contract, NO communication related to this RFP is permitted with members of the Arizona Board of Regents, or other university personnel, except as may be authorized by Arizona Board of Regents President Eileen Klein.

4. Each proposer approved to provide services will be required to sign a written contract with the Arizona Board of Regents (See Exhibit A).

The Arizona Board of Regents reserves the right to engage one or more consultants under this RFP for all or any elements of the scope of work, to reject all proposals, to waive or refuse to waive errors or omissions in any proposal, to extend the time for submission of proposals, or to withdraw this request at any time.

NOTICE TO PROPOSERS

There may be one or more amendments to this RFP. If you or your company desires to receive copies or notices of amendments, you must provide the information requested below to:

Mary Adelman, Director, Business and Financial Services
mary.adelman@azregents.edu.

All inquiries regarding this RFP must be addressed to Mary Adelman at mary.adelman@azregents.edu. ABOR will issue responses to inquiries and any other corrections or amendments it deems necessary in addenda issued prior to the proposal deadline. Proposers should not rely on any representations, statements or explanations other than those made in this RFP or in a formal addendum. It is the proposer's responsibility to ensure receipt of all addenda. All amendments will be sent via email unless another method is requested in writing.

Amendments to the RFP will only be sent to those individuals or firms that complete and return this form or provide the requested information by e-mail.

RFP Name	REQUEST FOR PROFESSIONAL REAL ESTATE CONSULTING SERVICES
Proposer name	_____
	_____
	_____
	_____
Phone number	_____
Contact person	_____
E-mail address	_____

Any alterations to this document made by the proposer may be grounds for rejection of the proposal or cancellation of any subsequent award.

PROJECTED TIMETABLE

January 12, 2016	Commence RFP Advertising and Mailing
January 26, 2016	Submit Questions
February 3, 2016	Respond to Questions
February 8, 2016	Proposal Deadline
February 9 – 29, 2016	Committee Evaluation/Interview Finalists
March 1, 2016	Award Contract

Request for Proposal

GENERAL SPECIFICATIONS

A. The CONSULTANT shall provide services in accordance with the provisions of this RFP.

B. The CONSULTANT shall be licensed and authorized to transact business in Arizona in accordance with applicable State laws.

C. The CONSULTANT must complete all Certifications attached to this RFP.

D. The CONSULTANT must separately notate all exceptions to this RFP.

E. The CONSULTANT will be responsible for all costs incurred in preparing or responding to this RFP. All materials submitted by the CONSULTANT in response to this RFP become the property of ABOR and will not be returned.

F. The CONSULTANT shall agree to indemnify ABOR and hold it harmless against:
   1. Any and all losses and liabilities for personal injury, death, or property damage arising out of, or as a consequence of, any work performed under the contract; and
   2. Any and all expenses related to claims or lawsuits resulting from above, including court costs and attorney(s) fees; and
   3. Any and all penalties and damages incurred by reason of the CONSULTANT's failure to obtain any permit or license under, or comply with, any applicable laws, ordinances, or regulations.

   The specific indemnification requirements will be included in a service contract (See Exhibit A) acceptable to ABOR.

G. The CONSULTANT shall establish and maintain procedures and controls that are acceptable to ABOR for the purpose of assuring that no information contained in its records or obtained from ABOR, the universities or others carrying out its functions under the contract shall be used by or disclosed by, its agents, officers, or employees, except as required to efficiently perform its duties under the contract. Persons requesting such information shall be referred to ABOR. CONSULTANT also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the CONSULTANT as needed for the performance of duties under the contract, unless otherwise agreed to in writing by ABOR.

H. ABOR reserves the right to audit the CONSULTANT's records with reasonable notice. Such audits may be conducted during the contract period and for a period of five years after completion of the contract.

I. The contract executed and issued by virtue of the contract award must provide for a master contract with ABOR.

J. The contract shall not bind nor purport to bind ABOR for any contractual commitment in excess of the contract period. The contract may be extended by written agreement for additional terms not to exceed a total of five years from the effective date of the original contract. If the contract is extended, all terms, conditions, and provisions of the original contract shall remain the same and apply during the extension period with the exception of costs charged.

K. The awarded contract is subject to cancellation by ABOR pursuant to the provisions of Section 38-511 Arizona Revised Statutes.

SCOPE OF WORK

Consulting services may include general advice, policy development, and process enhancements related to oversight by the Arizona Board of Regents of significant university real estate transactions. Consultant(s) may also be asked to advise the board regarding specific university initiatives or projects.

Consulting services may be sought in the following areas:

- Review of current ABOR and university policies related to significant real estate transactions;

- Review of current universities' policies and processes for public-private and public-public real estate development;

- Appropriate ABOR governance oversight of significant university real estate transactions, including understanding best practices for:
    - Board governance and fiduciary obligations,
    - Appropriate and on-going evaluation of opportunities, projects, initiatives and performance,
    - Entrepreneurial and competitive innovation in the context of appropriate oversight of valuable public resources and the needs of the university community, and
    - Timely and appropriate identification of any need for outside expert consultants;

- Best practices related to significant real estate transactions, including:
    - Capital financing,
    - Project management related to contracting and construction,
    - Operational pro-forma evaluation, and
    - Life cycle and return-on-investment evaluation;

- Legal and compliance requirements related to public-private and public-public projects and relationships, including any issues and implications for the Arizona Board of Regents and the universities as public entities.

EVALUATION CRITERIA

ABOR will first examine proposals to eliminate those that are non-responsive to the stated requirements. Therefore, proposer should exercise care in reviewing the proposal format required for the RFP.

ABOR reserves the right to contact references to obtain information regarding a proposer's performance on previous projects. A sample of references may be checked for each proposer.

Each proposal should address:

1. Experience in the subject matter areas described in the scope of work;
2. Experience advising or representing the interests of governing boards, universities or public entities in real estate transactions;
3. Experience of personnel to be assigned to performance of the scope of work, including identification of a primary contact and a description of the percentage of and type of work to be assigned to each individual;
4. Method of approach to performing services described in the scope of work; and
5. Pricing schedule/fee proposals.

The final award(s) will be subject to the execution of a service contract or contracts (see Exhibit A) acceptable to ABOR.

MANDATORY CERTIFICATIONS

CONFLICT OF INTEREST CERTIFICATION

_____
(Date)

The undersigned certifies that to the best of his/her knowledge: (**check only one**)

( ) There is no officer or employee of the Arizona Board of Regents, Arizona State University, Northern Arizona University or University of Arizona who has, or whose relative has, a substantial interest in any contract resulting from this request.

( ) The names of any and all public officers or employees of the Arizona Board of Regents, Arizona State University, Northern Arizona University or University of Arizona who have, or whose relative has, a substantial interest in any contract resulting from this request, and the nature of the substantial interest, are included below or as an attachment to this certification.

_____ (Firm)	_____ (Address)
_____ (Email Address)	_____
_____ (Signature required)	_____ (Phone)
_____ (Print name)	_____ (Fax)
_____ (Print title)	_____ (Federal Taxpayer ID Number)

FEDERAL DEBARRED LIST CERTIFICATION

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Dec 2001)

_____
(Date)

In accordance with the Federal Acquisition Regulation, 52.209-5:

(a) (1) The CONSULTANT certifies, to the best of its knowledge and belief, that—
(i) The CONSULTANT and/or any of its Principals—

(A) (check one) **Are ( )** or **are not ( )** presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; (The debarred list (List of Parties Excluded from Federal Procurement and Non-Procurement Programs) can be found at https://www.sam.gov/index.html/#1#1.)

(B) (check one) **Have ( )** or **have not ( )**, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) (check one) **Are ( )** or **are not ( )** presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The CONSULTANT (check one) **has ( )** or **has not ( )**, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (*e.g.,* general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The CONSULTANT shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the CONSULTANT learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the CONSULTANT's responsibility. Failure of the CONSULTANT to furnish a certification or provide such additional information as requested by the Contracting Officer may render the CONSULTANT nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an CONSULTANT is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the CONSULTANT knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

_____	_____
(Firm)	(Address)
_____	_____
(Email Address)	
_____	_____
(Signature required)	(Phone)
_____	_____
(Print name)	(Fax)
_____	_____
(Print title)	(Federal Taxpayer ID Number)

ANTI-LOBBYING CERTIFICATION

Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sept 2007)

_____
(Date)

In accordance with the Federal Acquisition Regulation, 52.203-11:

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The CONSULTANT, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989—

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this contract;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the CONSULTANT shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

(Signature page follows)

_____	_____
(Firm)	(Address)
_____	_____
(Email Address)	
_____	_____
(Signature required)	(Phone)
_____	_____
(Print name)	(Fax)
_____	_____
(Print title)	(Federal Taxpayer ID Number)

LEGAL WORKER CERTIFICATION

_____
(Date)

As required by Arizona Revised Statutes §41-4401, ABOR is prohibited from awarding a contract to any contractor who fails, or whose subcontractors/subrecipients fail, to comply with Arizona Revised Statutes §23-214-A. Contractor warrants that it complies fully with all applicable federal immigration laws and regulations that relate to its employees, that it shall, as applicable or required under Arizona Revised Statutes §23-214A, verify, through the e-verify program as jointly administered by the U.S. Department of Homeland Security and the Social Security Administration or any of its successor programs, the employment eligibility of each employee hired to work on the contract, and that it shall, as applicable or required under Arizona Revised Statutes §23-214A, require its subcontractors and sub-subcontractors to provide the same warranties to Contractor.

A breach of the foregoing warranty shall be deemed a material breach of the contract. In addition to the legal rights and remedies available to ABOR hereunder and under the common law, in the event of such a breach, ABOR shall have the right to terminate the contract. Upon request, ABOR shall have the right to inspect the papers of each contractor, subcontractor or any employee of either who performs work hereunder for the purpose of ensuring that the contractor or subcontractor is in compliance with the warranty set forth in this provision.

_____	_____
(Firm)	(Address)
_____	_____
(Email address)	
_____	_____
(Signature required)	(Phone)
_____	_____
(Print name)	(Fax)
_____	_____
(Print title)	(Federal Taxpayer ID Number)

EXHIBIT A

SAMPLE AGREEMENT

ARIZONA BOARD OF REGENTS
AGREEMENT FOR PROFESSIONAL SERVICES

PARTIES: THE ARIZONA BOARD OF REGENTS (**"BOARD"**); and

_____

_____

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

AGREEMENT

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

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

3. The initial term of this Agreement shall be one year and shall commence on _____, 20__, and shall conclude on _____, 20___, unless sooner terminated by either party. This Agreement may be renewed four times for periods of up to one year each upon mutual written agreement of both parties for a total term not to exceed 5 years. The BOARD may terminate this Agreement with or without cause upon 10 days written notice to the CONSULTANT. If this Agreement is terminated, the BOARD shall have no further obligations other than payment for services already rendered and for expenses previously incurred.

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

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

6. For all purposes under the terms of this Agreement, CONSULTANT shall be an independent contractor, and not an officer or employee of the BOARD. The BOARD 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.

7. The conduct and control of work under this Agreement lies solely with CONSULTANT, and the BOARD is interested only in final results to be achieved. The BOARD 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.

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

9. 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 BOARD. CONSULTANT shall not release such work product or other information obtained or produced pursuant to this Agreement without the prior written consent of the BOARD.

10. 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.

11. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with A.R.S. Statute 38-511.

12. CONSULTANT shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination, and immigration.

13. The parties agree to submit all disputes under this agreement to the claims resolution procedures of the Arizona Board of Regents Procurement Policies Section 3-809C.

14. CONSULTANT and subcontractors shall procure and maintain until all of CONSULTANT’s obligations have been discharged insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work by the

CONSULTANT, the CONSULTANT's agents, representatives, employees or subcontractors.

15. The insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in the Agreement. Neither the BOARD nor the State of Arizona warrant that the minimum limits 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 and advertising 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
   - Damage to Rented Premises $ 50,000
   - Each Occurrence $1,000,000

   a. The policy shall be endorsed **(Blanket Endorsements are not acceptable)** to include the following additional insured language: **"The State of Arizona, and its departments, agencies, boards, commissions, universities, 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."** 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.
   b. Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of the **"State of Arizona, and its departments, agencies, boards, commissions, universities, 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 **(Blanket Endorsements are not acceptable)** to include the following additional insured language: **"The State of Arizona, and its departments, agencies, boards, commissions, universities, 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 automobiles owned, leased, hired, or borrowed by the CONSULTANT."** 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.
b. Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of the **"State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees"** for losses arising from work performed by or on behalf of the CONSULTANT.
c. Policy shall contain a severability of interest provision.

3. **Worker's Compensation and Employers' Liability**

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

a. Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of the **"State of Arizona, and its departments, agencies, boards, commissions, universities, 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 2 years beginning at the time work under this Agreement is completed.

b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this Agreement

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed **(Blanket Endorsements are not acceptable)** to include, the following provisions:

1. The CONSULTANT'S policies shall stipulate that the insurance afforded the CONSULTANT shall be primary insurance and that any insurance carried by the Board, its agents officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
2. Coverage provided by the CONSULTANT shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

C. NOTICE OF CANCELLATION: Should any of the above described policies be cancelled before their expiration date, notice shall be delivered in accordance with the policy provisions. Such notice shall be sent directly to the Arizona Board of Regents, 2020 N. Central Ave., Ste. 230, Phoenix, AZ 85004 and shall be sent by certified mail, return receipt requested.

D. ACCEPTABILITY OF INSURERS: CONSULTANT'S insurance shall be placed with companies licensed in the State of Arizona or that hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have 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 BOARD 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 **(Blanket Endorsements are not acceptable)** are to be received and approved by the BOARD 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 the Arizona Board of Regents, 2020 N. Central Ave., Ste. 230, Phoenix, AZ 85004. The BOARD project shall be noted on the certificate of insurance. The State of Arizona and/or the BOARD reserve the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

F. **SUBCONTRACTORS:** CONSULTANT's certificate(s) shall include all subcontractors as insureds under its policies or CONSULTANT shall furnish to the BOARD 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 BOARD 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 BOARD will not forward any request for modification or variation without a complete and significant justification.

16. To the extent allowed by law, CONSULTANT shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, 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, attorneys' 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 BOARD, the State of Arizona, their officers, officials, agents and employees for losses

arising from the work performed by the CONSULTANT for the BOARD and/or the State of Arizona.

17. This Agreement may be cancelled without any further obligation on the part of THE ARIZONA BOARD OF REGENTS and the BOARD 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.

18. 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 BOARD for 5 years after completion of this Agreement. Records shall be produced at a place designated by the BOARD, upon reasonable notice to the CONSULTANT.

19. Notice is provided of Sections 12-1518 and 12-133, Arizona Revised Statutes.

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

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

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

23. BOARD and CONSULTANT agree that during the term of this Agreement, and for a period of twelve months after its termination or expiration, neither Party shall hire, directly or through a staffing company or placement agency, or otherwise retain as an employee or independent contractor any employee or contractor of the other party who provided services under this Agreement; provided, however, that neither party shall be restricted in any public advertising of employment opportunities that are not specifically directed at the other party's employees and neither party shall be restricted in hiring any applicants who respond to any such public advertising. For the avoidance of doubt, the parties agree that the provisions of this section are not intended to restrict employees of either party from responding to employment advertisements and voluntarily applying for available employment in either party’s organization.

24. As required by Arizona Revised Statutes §41-4401, BOARD is prohibited after September 30, 2008 from awarding a contract to any contractor who fails, or whose subcontractors/subrecipients fail, to comply with Arizona Revised Statutes § 23-214-A. CONSULTANT warrants that it complies fully with all applicable federal immigration laws and regulations that relate to its employees, that it shall, as applicable or required under Arizona Revised Statutes § 23-214A, verify, through the employment verification pilot program as jointly administered by the U.S. Department of Homeland Security and the Social Security Administration or any of its successor programs, the employment eligibility

of each employee hired to work on this Agreement, and that it shall, as applicable or required under Arizona Revised Statutes § 23-214A, require its subcontractors and sub-subcontractors to provide the same warranties to CONSULTANT.

A breach of the foregoing warranty shall be deemed a material breach of this Agreement. In addition to the legal rights and remedies available to BOARD hereunder and under the common law, in the event of such a breach, BOARD shall have the right to terminate this Agreement. Upon request, BOARD shall have the right to inspect the papers of each contractor, subcontractor or any employee of either who performs work hereunder for the purpose of ensuring that the contractor or subcontractor is in compliance with the warranty set forth in this provision.

25. 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.

26. This Agreement may not be modified or amended except by written instrument signed by both parties.

27. 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.

THEREFORE, the parties have executed this Agreement the dates set forth below.

THE ARIZONA BOARD OF REGENTS (BOARD)	__***EXAMPLE – NOT FOR SIGNATURE*** __
By _____	By_____
Title _____	Title_____
Date: _____	Date: _____

EXHIBIT A
TO SAMPLE AGREEMENT

SERVICES TO BE PROVIDED BY THE CONSULTANT AND FEE SCHEDULE