

## **AGREEMENT FOR CONSULTANT SERVICES**

**THIS AGREEMENT** made and entered into at Dayton, Montgomery County, Ohio, on the dates set forth at the end hereof, between the **BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO**, Montgomery County Administration Building, 451 West Third Street, P.O. Box 972, Dayton, Ohio 45422 (the "Board"), and Burges & Burges Strategists (the "Consultant") and Sinclair Community College (the "Fiscal Agent") for the **Public Dialogue on Regionalism**.

### **WITNESSETH:**

WHEREAS, the Board is desirous of securing professional services for the above-referenced project; and

WHEREAS, the Board and the consultant mutually desire to contract with each other to perform the scope of work and services embodied in the work scope attached hereto as Appendix "A"; and

WHEREAS, the Consultant is qualified, experienced and willing to perform said work.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with intent to be legally bound, agree as follows:

### **ARTICLE ONE: SCOPE OF WORK**

The Consultant agrees to perform the services embodied in the Scope of Work and Services attached hereto as Appendix "A", whose terms are fully incorporated into this Agreement. The Consultant will coordinate with the entire consulting team made up of Central State University, Sinclair Community College, University of Dayton and Wright State University and Burges & Burges Strategists.

## **ARTICLE TWO: PAYMENT OF CONSULTANT**

The Board agrees to pay the Fiscal Agent for the Work as described in Appendix "A" a total fee not to exceed \$197,000.

The Fiscal Agent shall submit documented invoices on a monthly basis, in writing, subject to approval by the Board up to the maximum amount allowed under the contract. Such documentation shall be supplied by the Fiscal Agent directly to the Deborah A. Feldman, County Administrator, 451 W. Third Street, P.O. Box 972, Dayton, OH 45422 for which reimbursement is sought. It is specifically understood that compensation for services shall not accrue until such service is rendered.

Services in addition to those enumerated in the Scope of Work and Services are not authorized in the absence of a written agreement between the parties. The Fiscal Agent warrants that its accounting records for the Project shall be available for the Board's inspection upon reasonable request. The Fiscal Agent will be responsible for payment of consulting team partners.

## **ARTICLE THREE: TERM**

The term of this agreement shall be from the date of approval of this Agreement by the Board and shall terminate on December 31, 2012.

## **ARTICLE FOUR: CONFLICT OF INTEREST**

This Agreement in no way precludes the Consultant from obtaining and working under any additional contractual arrangements with other parties aside from the Board, assuming that the contractual work in no way impedes the Consultant's ability to perform the services required under this Agreement. The Consultant warrants that at the time of entering into this Agreement, it has no interest in nor shall it acquire any interest, direct or indirect, in any agreement, which will impede its ability to perform the required services under this Agreement.

## **ARTICLE FIVE: RETAINAGE FOR CONSULTANT PURPOSES**

The Consultant agrees to remain the agent of the owner to provide general intellectual services, interpretations and operational assistance of any and all written work products generated pursuant to this Agreement until the termination of this agreement.

## **ARTICLE SIX: MATERIALS**

All materials created or prepared under the terms of this Agreement shall become the property of the Board. No materials prepared under the terms of this Agreement shall be subject to an application for copyrights, patents, service marks or trademarks by the Consultant.

## **ARTICLE SEVEN: ASSIGNMENTS**

This Agreement may not be assigned or otherwise transferred without the express written consent of the Board.

## **ARTICLE EIGHT: EMPLOYEES, SUBCONTRACTORS AND CONSULTANTS**

All subcontractors and consultants must be approved by the Board in writing and changes shall not be made without prior written approval of the Board. Also, all key personnel assigned to the project by the Consultant as employees must be approved by the Board in writing and changes shall not be made without prior written approval of the Board. Approval of any employee, subcontractor or consultant shall not constitute a waiver of any right of the Board or its authorized representative to hold the Consultant liable for any breach under this Agreement. The Consultant hereby agrees to specifically bind every subcontractor and consultant to all of the applicable terms and conditions under this Agreement. The Board shall have no obligation to pay or to see to the payment of money to any employee, subcontractor or consultant except as may otherwise be required by law.

## **ARTICLE NINE: GOVERNING LAW**

This Agreement and any modifications, amendments, or other alterations authorized by the Board shall be governed, construed and enforced under the laws of the state of Ohio.

## **ARTICLE TEN: INTEGRATION AND MODIFICATION**

This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties to this Agreement. Also, this Agreement shall not be modified in any manner except by an instrument, in writing, executed by the parties to this Agreement.

## **ARTICLE ELEVEN: SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

## **ARTICLE TWELVE: TERMINATION**

This Agreement may be terminated by either party only upon notice, in writing, delivered upon the other party at least thirty (30) calendar days prior to the effective date of termination. The Board may also terminate this Agreement in the event that the Board is of the opinion that the Consultant is carrying out the terms of this contract in an unreasonable or unprofessional manner. Said termination for this particular reason shall occur upon the provision of a written notice of termination to the Consultant thirty (30) calendar days in advance of the date of the proposed termination, stating in the termination notice the reason for said termination. The Board, at its discretion, may allow the Consultant to cure the reason for the termination provided the cure of the reason is accomplished within twenty (20) calendar days of the date of the forwarding of the termination notice.

The parties further agree that should the Consultant become unable for any reason to complete the work called for by virtue of this Agreement, that such work as the Consultant has

completed upon the date of its inability to continue the terms of this Agreement shall become the property of the Board, and further the Board shall not be liable to tender and/or pay to the Consultant any further compensation after the date of the Consultant's inability to complete the terms hereof, which date shall be the date of termination. Notwithstanding the above, the Consultant shall not be relieved of liability to the Board for damages sustained by the Board by virtue of any breach of the Agreement by the Consultant; and the Board may withhold any compensation to the Consultant for the purpose of set-off until such time as the amount of damages due the Board from the Consultant is agreed upon or otherwise determined.

### **ARTICLE THIRTEEN: COMPLIANCE**

The Consultant agrees to comply with all local, state and federal statutes and/or regulations which relate to the purpose of this Agreement, the Consultant acknowledging the applicability of pertinent provisions of Chapter 307 of the Ohio Revised Code.

The Consultant accepts full responsibility for payment of all unemployment compensation insurance premiums, worker's compensation premiums, all income tax deductions, pension deductions, and any and all other taxes or payroll deduction required of the Consultant and all employees engaged by the Consultant for the performance of the work authorized by this Agreement.

### **ARTICLE FOURTEEN: NONDISCRIMINATION**

During the performance of this Agreement, the Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, ancestry, handicap, age, political belief or place of birth. The Consultant will ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, sexual orientation, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Consultant, or any person claiming through the Consultant, agrees not to establish or

knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Consultant.

**ARTICLE FIFTEEN: INDEMNIFICATION**

The Consultant agrees to protect, defend, indemnify and hold the Board, its officers, employees and agents free and harmless from and against any and all losses, claims of loss, causes of action, penalties, damages, settlements, costs, liabilities, or expenses of every kind being claimed due from the Board from any source whatsoever and which result from any negligent or intentionally wrongful acts or omissions of the Consultant, its employees and/or officers. The Consultant agrees to be responsible for the payment of all damages, costs and expenses including attorneys fees incurred by the Board while the Board defends any action, cause of action, or claim to the extent that they arise out of the aforementioned acts or omissions.

**ARTICLE SIXTEEN: RELATIONSHIP**

Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership, association or joint venture with the Consultant in the conduct of the provisions of this Agreement. The Consultant shall at all times have the status of an independent contractor without the right or authority to impose tort, contractual or any other liability on the Board.

**ARTICLE SEVENTEEN: DISCLOSURE**

The Consultant hereby covenants that it has complied with the County's disclosure policy adopted pursuant to Resolution No. 83-112, dated January 18, 1983, which requires anyone contracting with the Board to disclose to the Board any business relationship or financial interest that it has with a Montgomery County, Ohio employee or employee's business, or any business relationship or financial interest that a Montgomery County, Ohio, employee has with the contracting party or in the contracting party's business.

## **ARTICLE EIGHTEEN: NONWAIVER**

Any rights, responsibilities, remedies, duties or obligations created by this Agreement shall be in addition to all other rights, responsibilities, remedies, duties and obligations provided for in this Agreement or by law and shall in no way act as a waiver or limitation of any rights, responsibilities, remedies, duties or obligations otherwise imposed or available either by law or by contract.

No action or failure to act shall constitute a waiver of any right, responsibility, remedy, duty or obligation afforded under this Agreement or by law, nor shall any act or failure to act constitute approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

## **ARTICLE NINETEEN: AUTHORITY TO BIND PRINCIPAL**

Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, responsibilities, remedies, duties and obligations incurred by way of this Agreement.

## **ARTICLE TWENTY: NOTICES**

Any notices required or authorized to be given pursuant to this Agreement shall be deemed to be given when mailed by certified or registered mail, postage prepaid, as follows: if to the Board, to the Board's address as shown on the face of this Agreement; if to the Consultant, to the Consultant's address as shown on the face of this Agreement.

## **ARTICLE TWENTY-ONE: HEADINGS**

The use of topical headings, article names or titles in this Agreement are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of this Agreement.

## **ARTICLE TWENTY-TWO: APPROVAL**

This Agreement is subject to the written approval of the Board by Resolution and to Certification by the Auditor of Montgomery County, Ohio, and shall not be binding until such approval and certification.

### **ARTICLE TWENTY-THREE: SIGNATURE**

The Consultant hereby acknowledges that this Agreement must be signed and returned to the (RESPONSIBLE COUNTY OFFICE) within ten (10) days of receipt for signature or the offer to enter into this Agreement may be canceled and voided by the Board.



IN WITNESS WHEREOF, the parties have hereunto set their hands this 14th day of June, 20  .

Signed and acknowledged in the presence of:

BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Judy Dodge, Commissioner

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Dan Foley, Commissioner

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Deborah A. Lieberman, Commissioner

Gayle J. Ingram  
Witness

OR  
By: Deborah A. Feldman  
Deborah A. Feldman, Administrator

Amy Wiedeman  
Witness

BURGES & BURGES STRATEGISTS

By: (Sign) W. Burges

By: (Print) William Burges

Title: President - Burges & Burges

Date: June 8<sup>th</sup> 11

SINCLAIR COMMUNITY COLLEGE

By: (Sign) \_\_\_\_\_

By: (Print) \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**MATHIAS H. HECK, JR.  
PROSECUTING ATTORNEY  
MONTGOMERY COUNTY, OHIO**

By: Mathias H. Heck, Jr.  
Assistant Prosecuting Attorney

Date: 6-9-11



## **APPENDIX: SCOPE OF SERVICES WITH TEAM MEMBERS**

The consulting team will provide or attract the resources working with approval from the co-chairs and steering committee, and serve as lead staff for the following program of work:

### **Ongoing Expert Support:**

- Provide overall project research and presentation support as a consulting team based on decisions of the co-chairs and steering committee within the overall plan outlined above. [ALL]
- Provide guidance, strategic support and resource development assistance as appropriate for reasonable number of spinoff activities approved by the co-chairs and steering committee. [ALL]
- Staff monthly meetings of the co-chairs, other work Community Summits as needed and steering committee and bi-weekly meetings or conference calls among project staff. [B&B]
- Manage media, public and constituent group relations with the approval of the chairs. Work to engage and coordinate the work of media partners/sponsors with donated resources of at the lowest possible cost. [B&B]

### **Resource Development:**

- Assist the co-chairs in preparing proposals and presentations to obtain sufficient funding, in-kind resources and partnerships for the regional collaboration initiative. [ALL]
- Assist the co-chairs in getting buy-in from sponsors, steering committee members and partners. [ALL]
- Assist in determining the feasibility of grant funding, in-kind support or partnerships to support recommended high priority next steps. [ALL]

### **Background, Opinion and Ongoing Grassroots Research:**

- Design a research program to gather data consistent with the commissioners' and co-chairs' goals, consistent with the eventual project budget. [ALL]
- Develop background materials such as demographic and socio-economic trends in the region, comparative analyses to like communities and competitive markets, best practices and cost-benefit analyses of realistic scenarios, hypothetical collaborative models for the region and projections of key initiatives from Community Summits. [CSU, UD, SINCLAIR, WSU]
- Conduct qualitative research [individual depth interviews, listening sessions and Community Summits] with elected and appointed officials, diverse community leadership constituencies and county citizens to determine how they think about these issues and create opportunities for them to collaborate. [CSU, UD, SINCLAIR, WSU]
- Facilitate a limited number of follow-up conferences and visits within budgetary parameters, and prepare reports on those for the entire group. [UD lead, ALL]

- Conduct a telephone poll of voters and at least one online survey of citizens to measure awareness and attitudes about regional cooperation for efficiency and growth. [WSU, B&B]

#### **Communications and Engagement:**

- Plan communications to promote Community Summits and engage citizens. [B&B lead, ALL]
- Host and facilitate Community Summits, working with media partners to broaden awareness and involvement. [CSU, UD, SINCLAIR, WSU]
- Utilize technology to maximize the reach of the Community Summits. [CSU, UD, SINCLAIR, WSU]
- Assure the design, development and maintenance of an interactive website and social networking capacity to provide a regular stream of active, useful, current information and to facilitate communication, relationships, and follow-up activities by participants. [SINCLAIR lead, ALL]
- Develop and distribute a quarterly report on the project's progress, which would be posted on the website, be used by the chairs and committee members for public presentations, and form the basis of media briefings, Q & A, and key regional stakeholder meetings. [ALL]
- Develop a schedule of public presentations about the need for greater regional cooperation, design presentations with key messages and updates, and provide presentation training for speakers' bureau drawn from the chairs, committee and participants. [B&B lead, ALL]
- Develop and execute an earned or cooperative media plan including print, online, radio and TV to make the project accessible to people who cannot attend events. [B&B lead, ALL]
- Reach out to community stakeholders throughout the process. [ALL]

#### **Community Summit Activities**

- Work with the co-chairs to develop a detailed agenda and substantive support materials and links for the entire program and each Community Summit. [UD lead, ALL]
- Engage appropriate presenters and panel members for each Community Summit, make sure presenters and panel members are well-prepared for the discussion, and debrief leaders and others after each Community Summit to determine if follow up support or other action is appropriate. In many cases this involves working directly with local, county and private sector leaders to bring them the details of how greater collaboration could work, both substantively and politically. [UD lead, ALL]
- If appropriate, identify and select interactive in-meeting technology [name] to quantify consensus, rate ideas, best practices and applicability to our region – and to revisit previous agenda items and recommendations when important new data or consensus emerges. [ALL]

- Provide a written summary of all Community Summits to the committee and participants, including a record of the presentation, questions, answers, unresolved issues and spinoff activities. [CSU, UD, SINCLAIR, WSU]
- Conduct and report on best practices research to answer critical questions and/or support key ideas about new initiatives that emerge from the Community Summits. [WSU lead, ALL]
- Develop and distribute materials after each meeting, and present the above summary of the previous Community Summit and new resources for participants at the subsequent one. [CSU, UD, SINCLAIR, WSU]

### **Final Report**

- Prepare, distribute and communicate a final report reviewing the data, describing the Community Summits and their critical work, detailing major options, and making specific recommendations as considered in the Community Summits and approved by the co-chairs and steering committee. [ALL]

