



EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-06)

Instructions for completing the EDS and the Contract process.

- 1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

1. EDS Number: A293-6-21FUND-15-168
2. Date prepared: 1/13/2016

3. CONTRACTS & LEASES
[X] Professional/Personal Services
\_\_\_ Grant
\_\_\_ Lease
\_\_\_ Attorney
\_\_\_ MOU
\_\_\_ QPA
\_\_\_ Contract for procured Services
\_\_\_ Maintenance
\_\_\_ License Agreement
\_\_\_ Amendment#
\_\_\_ Renewal #
\_\_\_ Other

FISCAL INFORMATION
4. Account Number: 43010-52900.531010
5. Account Name: IN 21ST CENTURY RESEARC
6. Total amount this action: \$80,000.00
7. New contract total: 80,000.00
8. Revenue generated this action: \$0.00
9. Revenue generated total contract: \$0.00
10. New total amount for each fiscal year:
Year 2016 \$80,000.00
Year \$
Year \$
Year \$

TIME PERIOD COVERED IN THIS EDS
11. From (month, day, year): 6/20/2015
12. To ( month, day, year): 8/1/2016
13. Method of source selection:
\_\_\_ Bid/Quotation \_\_\_ Emergency \_\_\_ Negotiated \_\_\_ Special Procurement
\_\_\_ RFP# \_\_\_ Other (specify)

35. Will the attached document involve data processing or telecommunications system Yes: IOT or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes): I.C. 5-28-18

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)
The Center for Business and Economic Development at Ball State University will perform a comprehensive examination of the 21st Century research and Technology Fund.

38. Justification of vendor selection and determination of price reasonableness:
The Center for Business and Economic Development at Ball State University has performed several studies of the Indiana 21st Century research and Technology Fund. This study will be executed within the context of the current fiscal conditions.

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)
Due to the complex nature of the study, preliminary work has begun. Please allow for back dating.

40. Agency fiscal officer or representative approval
41. Date Approved: 1/14/16
44. Attorney General's Office approval
45. Date Approved

AGENCY INFORMATION
14. Name of agency: Economic Development Corp
15. Requisition Number: 000005868

16. Address: IN Economic Development Corp
21st Century Fund
1 N CAPITOL AVE STE 900
INDIANAPOLIS, IN 46204

AGENCY CONTACT INFORMATION
17. Name: Michael Luciani
18. Telephone #: 317 2334336
19. E-mail address: mluciani@iedc.in.gov

COURIER INFORMATION
20. Name: Jackie Addison
21. Telephone #: 317.234.8741
22. E-mail address: jaddison@iedc.in.gov

VENDOR INFORMATION
23 Vendor ID # 0000051259
24. Name: BALL STATE UNIV
25. Telephone #: (765) 285-3398
26. Address: 2000 UNIVERSITY AVE
MUNCIE, IN 47306

27. E-mail address: mhicks@bsu.edu
28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) [X] Yes \_\_\_ No
29. Primary Vendor: M/WBE/IN-Vetera
Minority: \_\_\_ Yes [X] No
Women: \_\_\_ Yes [X] No
IN-Veteran \_\_\_ Yes [X] No
30. Primary Vendor Percentages
100.0 %

31. Sub Vendor: M/WBE/IN-Veteran
Minority: \_\_\_ Yes [X] No
Women: \_\_\_ Yes [X] No
IN-Veteran \_\_\_ Yes [X] No
32. If yes, list the %:
Minority: \_\_\_ %
Women: \_\_\_ %
IN-Veteran \_\_\_ %
33. Is there Renewal Language in \_\_\_ Yes [X] No
34. Is there a "Termination for Convenience" clause in the document? [X] Yes \_\_\_ No



**INDIANA ECONOMIC DEVELOPMENT CORPORATION  
INDIANA TWENTY-FIRST CENTURY RESEARCH AND  
TECHNOLOGY FUND  
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement"), entered into by and between the **INDIANA ECONOMIC DEVELOPMENT CORPORATION** (the "**IEDC**") and **BALL STATE UNIVERSITY** ("**Contractor**"), is executed pursuant to the terms and conditions set forth herein, and shall be dated as of the date of final execution by all parties hereto. In consideration of those mutual undertakings and covenants, the parties agree as follows:

**1. PURPOSE OF AGREEMENT.**

The purpose of this Agreement is to enable the IEDC to engage the services of the Contractor using the Indiana Twenty-First Century Research and Technology Fund of up to **EIGHTY THOUSAND (\$80,000.00)** (the "**Maximum Amount**") for the research project described in **Exhibit A** of this Agreement (the "**Project**"), attached hereto and incorporated by reference. This Agreement is a nonrecurring administrative expense of the Indiana Twenty-First Century Research and Technology Fund and shall be used exclusively in accordance with the provisions contained herein and Indiana Code § 5-28-16 establishing the Indiana Twenty-First Century Research and Technology Fund, as well as any rules adopted thereunder, and for no other purpose.

**2. TERM OF AGREEMENT.**

The term of this Agreement shall be from **June 20, 2015** until **August 1, 2016** (the "**Expiration Date**"), unless sooner terminated as described in this Agreement. All work and/or services under this Agreement must be completed by **August 1, 2016** (the "**Goal Date**"). The Contractor shall have until thirty (30) days after the Expiration Date to submit properly documented claims for payment of the funds. The Contractor may request in writing that the Expiration Date and Goal Date be extended; provided that the amount of funds disbursed under this Agreement may not exceed the original amount. The IEDC, through a duly authorized representative, may approve or deny such request in its sole and unreviewable discretion. Documentation approving an extension shall be attached hereto as an addendum. A duly authorized representative of the IEDC may not extend the Expiration Date or the Goal Date beyond **October 31, 2016**. If the Expiration Date and/or Goal Date is extended, all other provisions of this Agreement shall remain in full force and effect.

**3. "SEPARATENESS" OF CONTRACTS BETWEEN THE PARTIES.**

The IEDC acknowledges and agrees that because of the unique nature of state institutions of higher education, the duties and responsibilities of the Contractor in these standard conditions for contracts between the IEDC and a state institution of higher education are specific to the department or unit of the university identified in the Agreement, in this case, the Center for Business and Economic Research of Ball State University. The existence or status of any one contract between the IEDC and the University shall have no impact on the

execution or performance of any other contract and shall not form the basis for termination of any other contract by either party.

**4. MONITORING BY THE IEDC.**

(A.) In addition to the Contractor's duties as described in **Exhibit A**, the Contractor shall submit to the IEDC an oral and/or written progress report (the "**Progress Report**") as needed per request of the IEDC, detailing progress made toward completing the Project.

(B.) The Contractor has until the Expiration Date to complete the Project.

(C.) In the event that such Progress Reports are not submitted within the time frame allotted or the Contractor fails to produce the evidence required by the IEDC under Paragraph 5, the Contractor shall be deemed to be in material breach of this Agreement and the IEDC may, among its other remedies under this Agreement, withhold payment until the deficiency is corrected.

(D.) The State of Indiana (the "State") or the IEDC may periodically carry out an onsite monitoring review (as defined below), including an evaluation of activities, as deemed appropriate. The Contractor will effectively ensure the cooperation of the Contractor's employees in such monitoring and evaluation efforts. The Contractor will take all actions necessary to correct or cure any findings identified by the IEDC during its monitoring and evaluation.

(E.) If funds are disbursed and the Agreement is terminated by either party prior to the Expiration Date set forth in Paragraph 2 of this Agreement, the IEDC may elect to conduct an on-site monitoring review of the Project as described in Paragraph 4D of this Agreement.

**5. PAYMENT OF FUNDS BY THE IEDC.**

The payment of funding by the IEDC to the Contractor pursuant to this Agreement shall be made in accordance with the following schedule and conditions:

(A.) This Agreement must be fully executed.

(B.) All payments will be made in arrears only upon presentation of approved and signed State of Indiana Claim Vouchers, for costs incurred in accordance with the approved Project Budget in **Exhibit A**. Such costs may be invoiced to the IEDC not more frequently than monthly. All deliverables must be completed before the Expiration Date of this Agreement. As required by Indiana Code § 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with the instructions filed by the Contractor with the Indiana State Auditor's Office, unless an exception to such requirement is approved by the IEDC and the State of Indiana. Payments shall be deemed delivered upon being transmitted pursuant to the written instructions of the Contractor.

(C.) The IEDC may require the Contractor to produce satisfactory evidence, in the sole opinion of the IEDC, that substantial progress has been made toward completion

of the Project and that the conditions set forth or referenced in this Paragraph 5 have been met, prior to making a payment under this Agreement. All payments are subject to the IEDC's determination that the Contractor's performance to date conforms to the Project as approved and described at **Exhibit A**, notwithstanding any other provision of this Agreement to the contrary. In the event that the Contractor fails to show that the progress or completion of the Project conforms to the description set forth in this Agreement, the IEDC may impose sanctions against the Contractor in accordance with Paragraph 5(G) or may terminate the Agreement under Paragraph 18.

(D.) As stated in Paragraph 4 of this Agreement, all Progress Reports must be submitted in the time frame allotted. In the event the Progress Reports are not submitted in the time frame allotted, the IEDC may withhold authorization for any payment request until such time as the deficiency is corrected.

(E.) Travel expenses are provided to the Contractor and are included in the "Other Direct Costs" as provided for in the approved Project Budget in **Exhibit A** to this Agreement.

(F.) Notwithstanding any other provision of this Agreement, the Contractor expressly agrees that the monies provided herein by the IEDC are limited to the total Agreement amount set forth in Paragraph 1. The IEDC may deobligate any funds which have not been requested by properly documented invoice within thirty (30) days after the Expiration Date.

(G.) Failure to complete the Project in accordance with this Agreement may be considered a material breach of the Agreement and shall entitle the IEDC to impose sanctions against the Contractor including, suspension of all payments under this Agreement until such time as all material breaches are cured to the IEDC's satisfaction. Sanctions may also include repayment of all funds from the State of Indiana under this Agreement, held or expended for this Project or accounted for in the Project Budget (as defined in Paragraph 7).

(H.) All payments shall be made in arrears in accordance with State fiscal policies and procedures and, as required by Indiana Code § 4-13-2-14.8 by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of the State, notwithstanding any other law, rule or custom to the contrary. The written authorization must designate a financial institution and an account number to which all payments are to be credited. For forms and additional information see the Auditor of State's website at [www.in.gov/auditor](http://www.in.gov/auditor). No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by Indiana Code § 4-13-2-20 or by Indiana Code § 5-28-8.

## 6. ACCESS TO RECORDS.

The Contractor and its permitted subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this Agreement ("Records"), for inspection by the IEDC, the State of Indiana or by any of their respective authorized representatives, and reasonable requests for copies thereof shall be furnished if requested. The Contractor and its permitted subcontractors, if any, shall make all Records available at their respective offices at all reasonable times during the Term of this Agreement and for three (3) years from the date of final payment under this Agreement or until a state or federal audit has been completed and all audit exceptions cleared, whichever is earlier.

**7. PROJECT BUDGET AND BUDGET MODIFICATION.**

The Project Budget is set forth in Exhibit A of this Agreement (the "Budget"). Exhibit A may not be modified without the prior written consent of a duly authorized representative of the IEDC.

**8. STATUTORY AUTHORITY OF CONTRACTOR.**

As a condition of receiving funds from the Indiana Twenty-First Century Research and Technology Fund, the Contractor expressly warrants to the IEDC that it is a "qualified entity" and is statutorily eligible to receive monies from said fund under Indiana Code § 5-28-16. Should any court of competent jurisdiction find the Contractor legally ineligible, the Contractor expressly agrees to repay all monies paid to it under this Agreement.

**9. USE OF FUNDS BY CONTRACTOR.**

Funds received by the Contractor pursuant to this Agreement shall be used only to reimburse the Contractor for direct and indirect costs for instituting the Project as permitted by Indiana Code § 5-28-16 or providing services in conformance with Exhibit A and no other purpose. The Contractor further agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. The Contractor certifies that no other state funds (other than from the Contractor) from any source will be used to finance the specific activities reimbursed under this Agreement.

**10. CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, COPYRIGHT PROHIBITION AND OWNERSHIP OF DOCUMENTS AND MATERIALS.**

A. **Data Identified as Confidential and Provided to the Contractor.** The Contractor understands and agrees that data, materials, and information disclosed to the Contractor by the IEDC and/or its economic development partners may contain confidential and protected data. Therefore, the Contractor promises and assures that the Contractor will not disclose such data, material, and information (1) when it is evident from its source (*i.e.* when the Contractor is given access to the IEDC documents and systems) that it is confidential; (2) when it is specifically identified in writing as confidential by either the IEDC, the State or its economic development partners; and (3) when the record or information in the record is considered exempt from disclosure under the Indiana Access to Public Records Act (Indiana Code 5-14-3), including confidential financial information, trade secret, negotiations by the IEDC, and under any other applicable State law. The Contractor will not disclose or discuss

such confidential information with other parties without the prior written consent of the IEDC unless the information is otherwise publicly available from another source or required to be disclosed under the Indiana Access to Public Records Act.

The Contractor represents that it may accept confidential data, materials and information from third parties. The Contractor agrees that it shall remain responsible for maintaining the confidentiality of any such marked materials. The Contractor agrees that the State and the IEDC shall not be liable for disseminating any such materials once provided to them by the Contractor, unless specifically identified by the Contractor as confidential.

B. **Contractor's Work Product.** Upon completion of the Project or upon termination, the Contractor will transfer to the IEDC all the final deliverables (or drafts if the final deliverable is not completed) prepared under this Agreement or return, if requested by the IEDC, any information provided to the Contractor for this Project. All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Agreement, but specifically developed in relation to the Project shall be considered the property of the IEDC. Use of these materials, other than related to performance by the Contractor or for the educational purposes described below, without the prior written consent of the IEDC, is prohibited. The Contractor shall take such action as is necessary under law to preserve such rights in and of the IEDC while such property is within the control and/or custody of the Contractor.

The Contractor expressly agrees that no conclusions, discussions or summaries of the findings, results or work product related to the Project will be released or provided to any person unless deemed necessary by the Contractor to perform the services described in this Agreement, or as otherwise expressly permitted by this Agreement. In no instance, however, may the Contractor disclose information about economic development projects in which there is involvement by the State of Indiana and/or the IEDC, unless required by a court of law to make the disclosure or disclosure is required, per opinion of a party's legal counsel.

C. **Information Sharing and Educational Publishing.** The Contractor may publish in academic journals, present at symposia, or use any results arising out of the performance of this Agreement for its own internal instructional and research, or publication (*i.e.* graduate theses and dissertations) objectives. Any publications or presentations referencing the State or the IEDC, shall be made in accordance with this Paragraph 10, including the provisions on confidential information in Section 10(A) and with sufficiently advance notice and written consent of the IEDC.

D. **Access to Contractor's Work Product.** The Contractor shall provide the IEDC full, immediate, and unrestricted access to the Contractor's work product during the term of this Agreement. For any purposes outside those contemplated by this Agreement, and for which the IEDC's participation will be referenced, the IEDC shall have the right of review and approval of the use, disclosure, and the finished product prior to its publication. All such requests shall be made in writing and delivered to the Agency Head or their authorized designee. The IEDC shall have thirty (30) days to review such requests and will respond in

writing to the Contractor. If the IEDC has not responded within thirty (30) days, the request will be deemed approved.

E. **Key Persons.** The IEDC has designated a point of contact ("**Key Persons**") for requests for confidential information from the IEDC, which may be needed for the Contractor to complete this Project. The Contractor has designated Key Persons who shall be the sole and only persons to receive and manage confidential information from the IEDC. The Key Persons shall be Dr. Michael Hicks, and employees of the Contractor who report to Dr. Hicks. The Contractor represents and agrees that the Key Persons were fully briefed on the nature of the confidential information, including application of state law, the Indiana Access to Public Records Act, and penalties should such confidentiality be breached. The Contractor shall ensure that confidentiality shall not be breached in any way, nor shall other persons be given access to confidential information in any way, including other employees or agents of the Contractor, without advance written consent by the IEDC. Violation of this provision shall be a material breach of this Agreement, resulting in termination of this Agreement and liability for any damages.

#### 11. COMPLIANCE WITH LAWS.

(A.) The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the IEDC and the Contractor to determine whether the provisions of the Agreement require formal modification.

(B.) The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code § 4-2-6, Indiana Code § 4-2-7, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the website of the Indiana Inspector General at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the IEDC may, in its sole discretion, terminate this Agreement immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6, Indiana Code § 4-2-7, Indiana Code § 35-44.1-1-4 and under any other applicable laws.

(C.) The Contractor certifies by entering into this Agreement, that it is not presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the IEDC or the State of Indiana. Further, the Contractor agrees that any payments in arrears and currently due to the IEDC or the State of Indiana may be withheld from payments due to the Contractor. Additionally, payments may be withheld or delayed until the Contractor is current in its payments and has submitted proof of such payment to the IEDC.

(D.) The Contractor warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will

immediately notify the IEDC of any such actions. During the term of such actions, the Contractor agrees that the IEDC may delay or withhold payment under this Agreement until such actions have been resolved.

(E.) If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the IEDC, the State of Indiana or its agencies, and the IEDC decides to delay, withhold, or deny funding to the Contractor, the Contractor may request that funding be continued. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration ("IDOA") following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the IEDC may delay, withhold, deny, or apply under this paragraph shall not be subject to penalty or interest under Indiana Code § 5-17-5.

(F.) The Contractor warrants that the Contractor and its subcontractors shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the IEDC. In the event the Contractor fails to do so, the IEDC may withhold or delay payment under this Agreement until such default has been cured to the IEDC's satisfaction.

(G.) The Contractor hereby affirms that it is in good standing with the Indiana Department of Revenue. The Contractor also affirms that (1) there are no outstanding enforcement actions against it by agencies of the State of Indiana, and (2) there are no significant workforce issues pending against the Contractor. The below named signatory(ies) hereby warrant that they are authorized to make such affirmations to the IEDC.

(H.) The Contractor agrees that the IEDC may confirm, at any time, that no liabilities exist to the IEDC or the State of Indiana, and, if such liabilities are discovered, that the IEDC or the State of Indiana may bar the Contractor from contracting with the IEDC or the State of Indiana in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments on its liability to the IEDC or the State of Indiana and has submitted proof of such payment to the IEDC or the State of Indiana.

## **12. COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT.**

As required by Indiana Code § 5-22-3-7:

- (1) the Contractor and any principals of the Contractor certify that
  - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of
    - (i) Indiana Code § 24-4.7 [Telephone Solicitation of Consumers],
    - (ii) Indiana Code § 24-5-12 [Telephone Solicitations], or
    - (iii) Indiana Code § 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and
  - (B) the Contractor will not violate the terms of Indiana Code § 24-4.7 for the duration of the Agreement, even if Indiana Code § 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor:

- (A) ~~except for de minimis and nonsystematic violations~~, has not violated the terms of Indiana Code § 24-4.7 in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and  
(B) will not violate the terms of Indiana Code § 24-4.7 for the duration of the Agreement, even if Indiana Code § 24-4.7 is preempted by federal law.

**13. FUNDING CANCELLATION CLAUSE.**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, the Agreement shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**14. INFORMATION TECHNOLOGY ACCESSIBILITY STANDARDS.**

Any information technology related products or services purchased, used or maintained through this Agreement must be compatible with the principles and goals contained in the Electronic and Information Technology Accessibility Standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended. The federal Electronic and Information Technology Accessibility Standards can be found at <http://www.access-board.gov/508.htm>.

**15. NONDISCRIMINATION.**

Pursuant to Indiana Code § 22-9-1-10 and the Civil Rights Act of 1964, the Age Discrimination in Employment Act and the Americans with Disabilities Act, the Contractor and its sub-Contractors shall not discriminate against any employee or applicant for employment related to this Agreement with respect to the hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of the race, color, religion, sex, age disability, national origin or ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this Agreement also signifies compliance with applicable federal and state laws and regulations prohibiting the aforementioned discrimination in the provision of services.

**16. NOTICE TO PARTIES.**

Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following address, unless otherwise specifically advised.

- (A) Notices to the IEDC shall be sent to:  
INDIANA ECONOMIC DEVELOPMENT CORPORATION  
Attention: General Counsel  
One North Capitol Avenue, Suite 700

Funding ID: A293-5-21Fund-14-168  
Project: 417268

Indianapolis, IN 46204-2288

(B.) Notices to the Contractor for programmatic matters shall be sent to:

Center for Business and Economic Research  
Attention: Michael J. Hicks, Director  
Ball State University  
2000 W. University Avenue  
Muncie, IN 47306  
Email: mhicks@bsu.edu

Notices to the Contractor for administrative/contract matters shall be sent to:

Sponsored Project Administration (RH100)  
Attention: Justin M. Miller, Director  
Ball State University  
2000 W. University Avenue  
Muncie, IN 47306  
Email: jmmiller5@bsu.edu

Notice from the IEDC to the Contractor may be provided via electronic mail to the Contractor's electronic mail address specified above, or via certified, registered, or first-class U.S. mail at the option of the IEDC. Notice shall be deemed delivered upon dispatch. Any change in the Contractor's contact information must be provided in writing by the Contractor to the IEDC.

17. **RENEWAL OPTION.**

This Agreement does not have a renewal option, but may be extended in accordance with Paragraph 2.

18. **TERMINATION OF AGREEMENT.**

This Agreement may be terminated with or without cause by the IEDC before its Expiration Date by sending the Contractor written notice via certified mail, return receipt requested, at least thirty (30) days prior to the date of termination. Upon receipt of this notice from the IEDC to the Contractor, no new or additional liabilities payable by the IEDC shall be incurred without the prior written approval of the IEDC.

The Contractor shall continue to be responsible and liable for the proper performance of its obligations to the date of termination. The Contractor agrees to provide the IEDC with deliverables completed or in progress as of the date of such termination. In the event of such termination, the IEDC will perform an on-site monitoring review of all Project expenditures, as described in Paragraph 4 of this Agreement, with respect to the Contractor's proper expenditure of all funds through the date of termination. In the event of early termination under this provision, the Contractor shall be entitled to all budgeted costs incurred and non-cancellable commitments made through the date of termination.

19. **FORCE MAJEURE.**

In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

**20. ASSIGNMENT.**

This Agreement binds the Contractor's successors and assignees to all terms and conditions of this Agreement. The Contractor shall not assign or subcontract the whole or any part of the Project or this Agreement unless it has been approved in writing by the IEDC.

**21. DEBARMENT AND SUSPENSION.**

The Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or department, the IEDC, or agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

**22. PENALTIES; INTEREST; ATTORNEYS' FEES.**

The IEDC will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as authorized by Indiana law; in part, if applicable, Indiana Code § 5-17-5, Indiana Code § 34-54-8, and Indiana Code § 34-13-1, and Indiana Code § 34-52-2-3. Notwithstanding the provisions contained in Indiana Code § 5-17-5, the parties hereto stipulate and agree that any liability resulting from any failure of the IEDC to make payments as required hereunder shall be based solely on the amount of funding originating from the IEDC or the State of Indiana and shall not be based on funding from federal or other sources.

**23. MISCELLANEOUS.**

- (A.) The headings in this Agreement are intended solely for convenience or reference and will be given no effect in the construction or interpretation of this Agreement.
- (B.) This Agreement, including any attached exhibits, supersedes all prior oral and written proposals and communications, if any, and sets forth the entire Agreement of the parties with respect to the subject matter hereof and may not be altered or amended except in writing, signed by an authorized representative of each party hereto.
- (C.) The construction and enforcement of this Agreement will be governed by the laws of the State of Indiana, without regard to principles of choice of law and the venue for

any court action shall be the circuit or superior court of Marion County, Indiana or the United States District Court of the Southern District of Indiana and the Contractor hereby consents to the personal jurisdiction of said courts.

- (D.) No waiver of any default, failure to perform, condition, provision or breach of this Agreement will be deemed to imply or constitute a waiver of any other like default, failure to perform, condition, provision or breach of this Agreement.
- (E.) If any paragraph, term, condition or provision of this Agreement will be found, by a court of competent jurisdiction, to be invalid or unenforceable, or if any paragraph, term, condition or provision is found to violate or contravene the laws of the State of Indiana, then the paragraph, term, condition or provision so found will be deemed severed from this Agreement, but all other paragraphs, terms, conditions and provisions will remain in full force and effect.
- (F.) The parties to the Agreement, in the performance of this Agreement, will be acting in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of any other party for any purposes whatsoever. No party will assume any liability for any injury (including death) to any persons, or any damage to any property arising out of the acts or omissions of the agents, employees or subagents of any other party.
- (G.) The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.
- (H.) Unless otherwise terminated or modified as expressly permitted hereunder, this Agreement will remain in force during the Term stated in Paragraph 2. Notwithstanding anything contained herein to the contrary, provisions of this Agreement, which by their nature contemplate rights and obligations of the parties to be enjoyed or performed after the expiration or termination of this Agreement, will survive until their purposes are fulfilled.

**24. REPRESENTATIONS CONCERNING APPLICATION.**

The Contractor represents and warrants that the representations, statements and all other matters contained in the written materials submitted by the Contractor to the IEDC are true and complete in all material respects. It shall be considered a material breach of this Agreement if such representations, statements and other matters were not true and complete at the time the materials were submitted.

**25. AUTHORITY TO COMMIT TO AGREEMENT.**

Notwithstanding anything in this Agreement to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute contracts on behalf of the Contractor and has obtained all necessary or applicable approvals from the office of the Contractor to make this Agreement fully binding upon the Contractor when his/her signature

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is affixed, and this Agreement is not subject to further acceptance by the Contractor when accepted by the IEDC.

**26. NON-COLLUSION AND ACCEPTANCE.**

The undersigned attests, subject to the penalties for perjury, that the undersigned is the properly authorized representative, agent, member, or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

*(Remainder of page intentionally left blank)*

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In Witness Whereof, the Contractor and the Indiana Economic Development Corporation have, through duly authorized representatives, entered into this Agreement. The parties, having read and understand the foregoing terms of the Agreement, do by their respective signatures hereby agree to the terms thereof.

**BALL STATE UNIVERSITY**

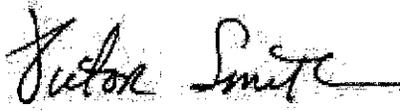


LEISA I. JULIAN, ASSOCIATE VICE PRESIDENT FOR BUSINESS  
AND AUXILIARY SERVICES

DATE: 1-11-2016

**INDIANA ECONOMIC DEVELOPMENT CORPORATION**

**Victor P. Smith, Secretary of Commerce**  
(Digital Signature Stamp Below)



Digitally signed by Victor P. Smith  
DN: cn=Victor P. Smith,  
o=Secretary of Commerce,  
ou=IEDC,  
email=vsmith@iedc.in.gov, c=US  
Date: 2016.01.13 09:31:52 -05'00'

**APPROVED:**  
**STATE BUDGET AGENCY**

BY:   
BRIAN E. BAILEY, DIRECTOR

DATE: 1/27/16

## EXHIBIT A

### Scope of Work

# Analysis of IEDC and Related Activities

Center for Business and Economic Research

Ball State University

**Background:** The Center for Business and Economic Research at Ball State University ("CBER") has performed several studies of the Indiana Economic Development Corporation operations and the Indiana Twenty-First Century Research and Technology Fund ("21<sup>st</sup> Century Fund") as an ongoing analysis, we propose additional studies related to the activities of the IEDC and the 21<sup>st</sup> Century Fund that will include their relationship in light of post 2010 changes to the structure of the Fund. In addition, we will provide an analysis of the new goals of the Fund and the IEDC as they are placed within the context current fiscal conditions and of the State and national economy.

**Proposal:** CBER proposes a comprehensive examination of the performance of the 21st Century Fund. We propose this report analysis take the following form:

*Macroeconomic Effects:* This study provides a baseline analysis of the macroeconomic effects of the 21st Century Fund to output, investment and employment in Indiana. Using the Indiana REMI model, we will estimate the long term effect of the 21st Century Fund under alternative funding scenarios and under differential assumptions regarding impacts. This section includes model results and a draft entrepreneurial climate analysis for Indiana's counties.

*Time Series Analysis:* CBER will conduct a series of evaluations of 21st Century Fund recipient performance measured against a control pool of all similar business in the state.

*Policy Analysis:* Following the completion of these studies we will conduct a review of policy which is designed to better integrate the 21<sup>st</sup> Century Fund's objectives and procedures in the State's economic development efforts.

**Key Steps:** This study will be accomplished in two steps. The first step is an update the earlier study, which will provide the State with a comprehensive review of the changes to the 21st Century Fund since the previous study. Step two is to complete the firm level tests of performance, and extend findings from Step one into a final report.

**Timeline:** This study will be performed from June 20, 2015 through August 1, 2016.

A preliminary report will be completed by April 1, 2016 and a final report will be submitted by August 1, 2016.

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**Project Budget:** The cost of this study shall not exceed \$80,000.

*Budget estimates for cost reimbursement expenses.*

*Personnel & Fringe* \$ 50,485

*Other Direct Costs* \$ 19,080

*Facilities & Administration Costs* \$ 10,435

---

**Total Study Costs \$ 80,000**

**Contact:** Michael Hicks, 765.285.3398 or [mhicks@bsu.edu](mailto:mhicks@bsu.edu)



# EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-06)

Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

1. EDS Number: A293-6-21FUND-15-168	2. Date prepared: 2/26/2016
--	--------------------------------

### 3. CONTRACTS & LEASES

<input checked="" type="checkbox"/> Professional/Personal Services	<input type="checkbox"/> Contract for procured Services
<input type="checkbox"/> Grant	<input type="checkbox"/> Maintenance
<input type="checkbox"/> Lease	<input type="checkbox"/> License Agreement
<input type="checkbox"/> Attorney	<input checked="" type="checkbox"/> Amendment# _____ 1
<input type="checkbox"/> MOU	<input type="checkbox"/> Renewal # _____
<input type="checkbox"/> QPA	<input type="checkbox"/> Other INVEST

### FISCAL INFORMATION

4. Account Number: 43010-52900.531010	5. Account Name: IN 21ST CENTURY RESEARC
6. Total amount this action: \$0.00	7. New contract total: 80,000.00
8. Revenue generated this action: \$0.00	9. Revenue generated total contract: \$0.00
10. New total amount for each fiscal year:	
Year 2016	\$80,000.00
Year _____	\$ _____
Year _____	\$ _____
Year _____	\$ _____

### TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year): 6/20/2015	12. To (month, day, year): 9/30/2016
13. Method of source selection:	
<input type="checkbox"/> Bid/Quotation	<input checked="" type="checkbox"/> Negotiated
<input type="checkbox"/> Emergency	<input type="checkbox"/> Special Procurement
<input type="checkbox"/> RFP# _____	<input type="checkbox"/> Other (specify) _____

AGENCY INFORMATION	
14. Name of agency: Economic Development Corp	15. Requisition Number: 000005868

16. Address: IN Economic Development Corp 21st Century Fund 1 N CAPITOL AVE STE 900 INDIANAPOLIS, IN 46204
--

AGENCY CONTACT INFORMATION	
17. Name: Michael Luciani	18. Telephone #: 317 2334336

19. E-mail address: mluciani@iedc.in.gov
---

COURIER INFORMATION	
20. Name: Jackie Addison	21. Telephone #: 317.234.8741

22. E-mail address: iaddison@iedc.in.gov
---

VENDOR INFORMATION	
23 Vendor ID # 0000051259	25. Telephone #: (765) 285-3398

24. Name: BALL STATE UNIV	26. Address: 2000 UNIVERSITY AVE MUNCIE, IN 47306
------------------------------	---

27. E-mail address: mhicks@bsu.edu
---------------------------------------

28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
---

29. Primary Vendor: M/WBE/IN-Vetera	30. Primary Vendor Percentages
Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	100.0 %
Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
IN-Veteran <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

31. Sub Vendor: M/WBE/IN-Veteran	32. If yes, list the %:
Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Minority: _____ %
Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Women: _____ %
IN-Veteran <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IN-Veteran _____ %

33. Is there Renewal Language in <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	34. Is there a "Termination for Convenience" clause in the document? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	--

35. Will the attached document involve data processing or telecommunications system <input type="checkbox"/> Yes: IOT or Delegate has signed off on contract
--

36. Statutory Authority (Cite applicable Indiana or Federal Codes): I.C. 5-28-16
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37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.) The Center for Business and Economic Development at Ball State University will perform a comprehensive examination of the 21st Century research and Technology Fund.
--

38. Justification of vendor selection and determination of price reasonableness: The Center for Business and Economic Development at Ball State University has performed several studies of the Indiana 21st Century research and Technology Fund. This study will be executed within the context of the current fiscal conditions.
--

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.) Due to the complex nature of the study, preliminary work has begun. Please allow for back dating.
--

40. Agency fiscal officer or representative approval 	41. Date Approved 2/26/2016	42. Budget agency approval AC	43. Date Approved 2/26/16
44. Attorney General's Office approval	45. Date Approved	46. Agency representative receiving from AG	47. Date Approved



## FIRST AMENDMENT

This First Amendment (the "First Amendment") to the Indiana Economic Development Corporation Indiana Twenty-First Century Research and Technology Fund Professional Services Agreement is made by and between the Indiana Economic Development Corporation (the "IEDC") and Ball State University (the "Contractor").

## RECITALS

WHEREAS, the IEDC and the Contractor previously entered into that certain Indiana Economic Development Corporation Indiana Twenty-First Century Research and Technology Fund Professional Services Agreement, with a commencement date of June 20, 2015, and an expiration date of August 1, 2016 (the "Original Agreement");

WHEREAS, the Original Agreement and the First Amendment shall hereinafter be referred to collectively as the "Agreement"; and

WHEREAS, the IEDC and the Contractor desire to amend the Agreement to extend the timeline for the Contractor to provide a preliminary report to the IEDC and to extend the term of the Agreement, so the Contractor can continue to perform the services set forth in the Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises, obligations and stipulations contained in this First Amendment and the Original Agreement, the parties hereby agree as follows:

## EFFECTIVE DATE

1. This First Amendment shall take effect on the date of last signature hereto ("Effective Date").

## AMENDMENT

2. Paragraph 2 of the Agreement is deleted and replaced in its entirety with the following:

### 2 TERM OF AGREEMENT

The term of this Agreement shall be from **June 20, 2015** through **September 30, 2016** (the "Expiration Date"), unless sooner terminated as described in this Agreement. All work and/or services under this Agreement must be completed by **September 30, 2016** (the "Goal Date"). The Contractor shall have until thirty (30) days after the Expiration Date to submit properly documented claims for payment of the funds. The Contractor may request in writing that the Expiration Date and Goal Date be extended; provided that the amount of funds disbursed under this Agreement may not exceed the original amount. The IEDC, through a duly authorized representative, may approve or deny such request in its sole and unreviewable discretion. Documentation approving an extension shall be attached hereto as an addendum. A duly authorized representative of the IEDC may not extend the Expiration Date or the Goal Date beyond **November 30, 2016**. If the

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Expiration Date and/or Goal Date is extended, all other provisions of this Agreement shall remain in full force and effect.

3. **Exhibit A.** The Contractor's Scope of Work, entitled Analysis of IEDC and Related Activities, is amended only to the following terms set forth below and all other terms in Exhibit A shall remain unaltered.

**Timeline:** This study will be performed from June 20, 2015 through September 30, 2016.

A preliminary report will be completed by June 30, 2016 and a final report will be submitted by September 30, 2016.

4. The parties hereby agree that all other unamended terms and conditions set forth in the Agreement shall remain the same and shall remain in full force and effect following the Effective Date. All benefits, rights, obligations and responsibilities of the parties under the Agreement shall transfer and operate under this First Amendment, and shall be construed and shall function as if the Agreement had remained in effect continuously but with the amendment of the terms contained in this First Amendment.

5. The undersigned representative of the Contractor to this First Amendment represents that the undersigned representative has been duly authorized by resolution or the governing documents of the Contractor to execute contracts, such as this one, on behalf of the Contractor and has obtained all necessary corporate approvals to make this First Amendment fully binding upon the Contractor (without qualification or acceptance by the Contractor) when the undersigned representative's signature is affixed hereto.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

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IN WITNESS WHEREOF, the Contractor and the IEDC have, through their respective duly authorized representatives, entered into this First Amendment as of the Effective Date. The parties, having read and understood the foregoing terms of this First Amendment, do by their respective signatures dated below hereby agree to the terms hereof.

**BALL STATE UNIVERSITY**

  
\_\_\_\_\_  
Randy J. Sollars, Director of University  
Budgets and Interim Assistant Treasurer

Date: 2/22/16

**APPROVED:  
STATE BUDGET AGENCY**

  
\_\_\_\_\_  
BRIAN E. BAILEY, DIRECTOR

Date: 2/26/16

**INDIANA ECONOMIC DEVELOPMENT  
CORPORATION**

Victor P. Smith, Secretary of Commerce  
(Digital Signature Stamp Below)



Digitally signed by  
Victor P. Smith  
DN: cn=Victor P.  
Smith, o=Secretary of  
Commerce, ou=IEDC,  
email=vsmith@iedc.i  
n.gov, c=US  
Date: 2016.02.25  
11:13:00 -05'00'