

AGREEMENT

Between

_____ (“Consultant”)

And

WEST VIRGINIA BOARD OF TREASURY INVESTMENTS
 (“Board”)

THIS AGREEMENT (“Agreement”), made effective the _____ (“Agreement”) is by and between _____ (“Consultant”) and the **WEST VIRGINIA BOARD OF TREASURY INVESTMENTS** (“Board”).

WHEREAS, Enrolled Committee Substitute for Senate Bill 558, enacted on April 9, 2005, by the West Virginia Legislature and effective July 8, 2005, created the Board in West Virginia Code § 12-6C-1 et seq., and established the duties and powers of the Board in connection with the Consolidated Fund, which consists of the operating funds of the State of West Virginia and various political subdivisions; and

WHEREAS, the Code authorizes the Board to enter into contracts and to employ and pay from the Consolidated Fund investment advisors, brokers, counsel, managers and any other assistants and agents the Board considers advisable using the policies and procedures of the State Treasurer’s Office and not those of the Purchasing Division of the Department of Administration; and

WHEREAS, Consultant was the successful proposer in response to Request for Proposals (“RFP”) BT1170000002 to provide investment consulting services; and

WHEREAS, the Parties desire to enter into this Agreement for Consultant to provide investment consulting services for the Consolidated Fund.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

The Parties covenant and agree as follows:

1. Agreement:

Board hereby engages Consultant, and Consultant hereby accepts the engagement, to provide the Services contemplated in this Agreement.

2. Definitions:

Unless otherwise defined in this Agreement, words or phrases shall have the meaning ascribed to them in this Section 2 and throughout this Agreement.

- a. “Agreement” means this Agreement.

- b. "Effective Date" means the first day of the initial term of this Agreement, _____.
- c. "Party" means either the Board or the Consultant.
- d. "Parties" means both of the Board and the Consultant.
- e. "Services" means the investment consulting services as provided in this Agreement.

3. Document Precedence:

This Agreement consists of the following documents, in the order listed, and all attachments to this Agreement and the following documents, which are all hereby made a part of this Agreement:

- a. this Agreement;
- b. the RFP; and
- c. Consultant's Proposal.

Any ambiguities or questions shall be resolved by reference to the documents in the order listed in this Section 3, unless otherwise specified in this Agreement.

This Agreement shall be incorporated into a purchase order issued by the West Virginia State Treasurer's Office, which purchase order shall constitute the contract between the Parties.

4. Term:

The initial term of the Agreement shall commence _____ and continue through _____, which is considered to be Year 1 of this Agreement. This Agreement may be extended for up to four (4) additional periods of one (1) year upon the mutual written consent of the Parties.

5. Services to be Provided:

- a. Consultant shall use its judgment and experience to furnish advice and recommendations to the Board in accordance with this Agreement. During the initial term and any extensions of this Agreement, Consultant shall perform the Basic Services, as set forth in the RFP. The Basic Services may be amended or modified upon the mutual written agreement of the Parties in order to meet market and other conditions, needs and demands.
- b. All work under this Agreement will be under the direction of the Board. Consultant will correct its work product without additional charge if any errors or omissions occur.
- c. The Board reserves the right to unilaterally accept, modify, reject, cancel prohibit or stop any and all work performed under this Agreement without penalty. However, such action shall not affect the Parties' rights and obligations arising prior to the date of the action.
- d. Additional Services to be performed will be specified in a written statement of work, executed by both Parties ("Statement of Work"). The Statement of Work shall include a maximum cost for the work. Any Statement of Work and any changes in Services under this Agreement shall be in a written addendum to this Agreement, in accordance with §17 of this Agreement.

6. Representations & Responsibilities:

- a. All Services performed under this Agreement shall comply with the requirements of the West Virginia Code §12-6C-1 et seq. and §44-6C-1 et seq.
- b. Consultant warrants that it will perform the Services under this Agreement in a timely, professional manner, using reasonable care and caution. Consultant shall at all times comply with the requirements of the RFP and maintain a staff of officers and other trained personnel for the performance of its obligations under this Agreement.
- c. The Board may follow or disregard, in whole or in part, any information, advice or recommendation with respect to Services provided by Consultant. However, the Parties acknowledge that the Board is relying upon the expertise of Consultant to provide the Services, and that Consultant is a fiduciary in advising the Board in its capacity as a registered investment advisor with the Securities and Exchange Commission. The Board acknowledges and agrees that (i) Consultant has no authority or responsibility to manage or in any way direct the investment of any assets that are the subject of Services provided by Consultant pursuant to this Agreement and (ii) Consultant has not and cannot make any promise, guarantee or other statement or representation regarding the future investment performance of such assets.
- d. Each Party represents that it has authority to execute and deliver this Agreement, and this Agreement constitutes a legal, binding obligation enforceable against it, except to the extent that enforceability is limited by bankruptcy, insolvency, or similar laws.

7. Compensation:

- a. Board shall pay Consultant for Basic Services rendered pursuant to this Agreement in arrears in the following amounts:

Year 1:	\$	per quarter
Year 2:	\$	per quarter
Year 3:	\$	per quarter
Year 4:	\$	per quarter
Year 5:	\$	per quarter

In the event any Additional Services are desired, Board shall pay Consultant for the work performed in accordance with a Statement of Work, which has been made part of a change order to the Purchase Order, at the following rate: _____.

Compensation provided for in this section includes all expenses incurred by Consultant, including, without limitation, any and all costs of overhead, travel or other costs or expenses that may be incurred by Consultant, unless otherwise agreed in a written and executed addendum in accordance with §17 of this Agreement. The Board is not obligated to pay any sum unless specified in this Agreement or a Statement of Work.

- b. Upon the completion to the satisfaction of the Board of a quarter or a Statement of Work, Consultant shall forward an invoice to the Board. Each invoice shall be in writing, containing a detailed account of the Services performed and stating the period in which

the Services were performed and the fee. The Board shall remit payment to Consultant within thirty (30) days following receipt of a legitimate and uncontested invoice.

8. Investment Advisers Act of 1940 Registration:

Consultant is registered as an investment adviser under the Investment Advisers Act of 1940, as amended. Pursuant to such Act, Consultant has delivered with this Agreement a true and complete copy of Part II of its Form ADV to the Board. The Board acknowledges (i) Board has received and had an opportunity to read a copy of Part II of Consultant's Form ADV as required by Rule 204-3 of the Investment Advisers Act; (ii) Board understands that delivery of Part II of Consultant's Form ADV does not imply that the U. S. Securities and Exchange Commission has made any recommendation of Consultant or the accuracy of the information contained therein; and (iii) Board has the right to terminate this Agreement, without penalty, within five (5) days of the date of this Agreement.

9. Damages:

The Board shall not be liable for any damages incurred by Consultant in the event that this Agreement is terminated. In the event of a default, any payment due Consultant may be withheld until Consultant has delivered to the Board any and all work product the Board considers appropriate.

10. Default:

Default occurs when one Party fails to perform or breaches any covenant to this Agreement and such failure or breach continues for a period of thirty (30) days after the other Party issues a notice to the defaulting Party specifying the default and stating that such notice is a "Notice of Default" under this Agreement. The defaulting Party is entitled to cure such default within the thirty (30) day period.

In the event of a default, the Board is entitled to terminate this Agreement in accordance with §14 of this Agreement, and to receive any damages incurred, including, without limitation, attorney fees, court costs, consequential and incidental damages caused by Consultant's fault or negligence. The rights and remedies provided in this section are not exclusive, and are in addition to any other rights and remedies provided by law.

11. Personnel:

The principal advisor to the Board on behalf of Consultant shall be agreed upon by the parties. In the event Consultant changes the principal advisor, the succeeding advisor(s) is subject to approval by the Board. Further, the Board may request replacement of Consultant's personnel at any time. The request shall be honored by Consultant unless the Parties agree otherwise. The Board shall have the right to approve the assignment of any of Consultant's personnel to perform work under this Agreement. Consultant warrants that the personnel will remain assigned for the agreed upon length of time and will not be replaced or reassigned except by mutual agreement of the Parties, unless the person leaves the employ of Consultant.

12. Subcontracting and Assigning:

No Services under this Agreement may be subcontracted by Consultant without the express prior written consent of the Board. In addition, Consultant may not assign this Agreement, in whole or in part, without the express prior written consent of the Board.

13. Confidentiality:

Consultant agrees to not disclose and to maintain as confidential all information and documents stated as confidential. Confidential information shall not include information that is required to be

disclosed by court order, provided that Consultant notifies the Board so that the Board may have a reasonable opportunity to obtain a protective order or other form of protection against disclosure. Information shall not be considered confidential information to the extent that such information: (i) is already known to the receiving Party free of any restriction at the time it is obtained from the other Party; (ii) is subsequently learned from an independent third party free of any known restriction and without breach of this Agreement; (iii) becomes publicly available through no wrongful act of Consultant; (iv) is independently developed by Consultant without reference to any confidential information of the Board; or (v) is required to be disclosed by law, regulation, court order or subpoena, provided that Consultant will exercise reasonable efforts to notify the Board prior to disclosure.

14. Termination:

Either Party has the right to terminate this Agreement, or any part of this Agreement, upon thirty (30) days written notice to the other Party, with or without cause and without penalty of any type.

In the event of a termination of the entire or any part of this Agreement or a Statement of Work, for any reason, including default, Consultant may seek payment for work completed to the date of termination. The Board, in its sole discretion, may authorize payment in whole or in part, of the amount Consultant seeks.

All data, materials and information obtained, developed, and produced under this Agreement shall be the property of the Board and, at the Board's discretion, may be copied, posted on the Board website or otherwise disseminated as public records. Upon termination of this Agreement in any manner, including for default, all data, files, materials, and/or information that is the property of the Board shall be delivered to the Board within thirty (30) days, provided that Consultant may retain copies of any documents if so required per its obligations as a registered investment advisor with the Securities and Exchange Commission. All proprietary software of Consultant shall remain the property of Consultant even if modified to meet the requirements of this Agreement.

15. Funding:

Services to be performed under this Agreement shall be continued in subsequent fiscal years contingent upon funding being available. In the event funding is not available, this Agreement shall terminate without penalty on June 30. After that date, this Agreement is of no effect and is null and void.

16. Notices:

All notices, requests, demands or other instruments which may or are required to be given by either Party shall be in writing and shall be deemed to have been properly received either when served personally upon the officer or agent of the Party set out below, or upon expiration of a period of forty-eight (48) hours, excluding weekends and holidays, from and after the postmark thereof when mailed postage prepaid by certified mail requiring a return receipt or by overnight mail. Addresses and fax machine numbers for notices are:

1. *For Board:*

West Virginia State Treasurer's Office
1900 Kanawha Blvd., East, E-122
Charleston, WV 25305
Telephone: (
FAX: (
Email:

2. *For Consultant:*

17. Amendments:

All amendments, modifications, alterations or changes to this Agreement shall be in a written addendum to this Agreement, signed by both Parties, and authorized in accordance with West Virginia law.

18. Waiver:

Waiver of any default or breach shall not be considered a waiver of any subsequent default or breach or a modification to the Agreement.

19. Severability:

If any provision of this Agreement or any document referenced in this Agreement is found to be invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining provisions which can be given effect without the invalid provision, and to this end, the provisions of this Agreement and any document referenced in this Agreement are declared to be servable.

20. Headings:

Headings herein are for convenience of reference only, and shall not be considered in any interpretation of this Agreement.

21. Governing Law:

This Agreement shall be governed by the laws of the State of West Virginia. In the event litigation ensues involving this Agreement, venue shall be proper only in Kanawha County, West Virginia. Consultant hereby acknowledges jurisdiction of the courts of the State of West Virginia for purposes of this Agreement.

22. Taxes:

As a State entity, the Board is exempt from Federal, State and local taxes, and will not pay taxes of any type for Consultant, nor will the Board file any returns or reports on behalf of Consultant.

23. Compliance:

During the term of this Agreement, the Parties shall comply with all federal and state laws, regulations, and policies.

24. Entire Agreement:

This Agreement constitutes this entire understanding and agreement of the Parties with respect to the subject matter and supersedes all prior agreements or understandings, written or oral, between the Parties with respect thereto.

25. Independent Contractors:

The Parties acknowledge and agree that they are dealing with each other hereunder as independent contractors. Neither Consultant nor any of its agents, employees or legal representatives are, nor shall they be considered to be affiliates, agents, employees or legal representatives of the Board or the State of West Virginia. Nothing contained in this Agreement shall be interpreted as constituting either Party as the joint venture or partner of the other Party

or as conferring upon either Party the power or authority to bind the other Party in any transaction with third parties.

26. Execution:

This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

WITNESSETH THE FOLLOWING SIGNATURES:

(“Consultant”)

West Virginia Board of Treasury Investments(“Board”)

By:
Title:
Date:

By:
Title:
Date: