

OLD DOMINION UNIVERSITY

STANDARD CONTRACT

Contract No. 09-221-0015-HRS

This Contract entered into this 1st day of December, 2008 by Wexford Science & Technology, LLC, hereinafter referred to as “Wexford”, and Commonwealth of Virginia, Old Dominion University, hereinafter referred to as “the University”.

WITNESSETH that Wexford and the University, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES:

Wexford shall provide certain “Economic Development and Capacity Building Services” to University in accordance with specific responsibilities and requirements contained in the Contract responsibilities section of this Contract. These responsibilities and requirements, generally, shall include the following:

- a. Build business creation capabilities, including financing options for early-stage and start-up companies.
- b. Support University efforts to create companies through commercialization of the University’s intellectual property.
- c. Establish business accelerator services for in-house and area start-up existing firms through University faculty and staffing and outside partners.
- d. Build effective, on-going relationships with economic development entities at the local, state, national and international levels.
- e. Guide the development of the University’s Innovation Research Park.

PERIOD OF PERFORMANCE:

The Contract period shall commence on December 1, 2008, and shall continue through June 30, 2010.

However, upon mutual agreement between both Wexford and the University, the Contract period may be extended for up to five (5) one-year renewal periods. Any and all renewal periods may include additional requested services related to, covered by and/or deemed necessary, and in compliance with the original “scope” specified herein, for successful completion and implementation of identified project scope, objectives, activities and deliverables, all as may be agreed to by the University and Wexford.

PURPOSE OF AGREEMENT:

This Contract is based upon the significance of the on-going relationship among the University, the Old Dominion University Real Estate Foundation, and Wexford in the creation of the Innovation Research Park. Wexford currently ground leases real property from the Real Estate Foundation as sites for the Innovation Research Park Buildings #1 and #2. The University leases specific spaces in both Buildings #1 and #2 from Wexford. Wexford and the University collectively seek to market the Innovation Research Park for the benefit of both parties, as well as for the economic prosperity of the Hampton Roads region.

Since the initiation of these relationships, the University and Wexford have confirmed the benefits and importance of effective collaboration in the advancement of overall economic development activities, particularly those that either utilize the University’s intellectual property or the talent manifested in the University’s faculty and students. However, this relationship between the University and Wexford does not currently focus upon other economic development efforts or capacity building by and for the University in improving the start-up and commercialization of intellectual property. It is logical that these services and capacity building be recognized and incorporated in this Contract and provided by Wexford through its staff, which is currently assisting other institutional clients with similar needs. Thus, this Contract provides a means to not only enhance the University’s capabilities and capacity in the broad area of economic development but also to do so in coordinated effort with the promotion of the Innovation Research Park.

CONTRACT RESPONSIBILITIES:

1. Wexford’s
 - a. Achieve Contract Objectives:
 - i. Establish specific business development services for new business start-ups and expansion of existing businesses, particularly for the commercialization of the University’s intellectual projects.
 - ii. Identify specific private sector and public business development financing that can be tapped to attract new firms (and retain/expand existing firms) in the Innovation Research Park, as well as promote business creation from the University’s Intellectual property.
 - iii. Initiate planning and related development efforts for establishing a business accelerator facility in the Innovation Research Park in collaboration with applicable local, state, federal agencies and other partners.
 - iv. Establish a defined meeting schedule with local, regional, state, and federal economic development organizations which expands the University’s presence and reputation with the attraction and retention of businesses, especially those in the Innovation Research Park.

- v. Perform #1 through #4 in coordinated effort, enhancing the overall marketing/development of the Innovation Research Park, as well as assuring timely and effective communication with the University's senior academic and administrative officers.
 - vi. Provide strategic and tactical support to University President and senior leadership on business creation activities from University intellectual property.
- b. Key Activities:
- i. Establish Specific Business Development Services for New Business Start-ups and Expansion of Existing Businesses.
 - Develop detailed outline/plan of needed business services along with proposed development/implementation plan in collaboration with the Dean of Business and Public Administration, Wexford, local economic agencies, and outside partners by February 15, 2009.
 - Implement the FY2008-2009 elements of the Business Development Services Plan and subsequent annual plans.
 - ii. Identify specific private sector and public business development (NMTC, VCC, grants) financing that can be tapped to attract new firms (and retain existing firms) in the Innovation Research Park, as well as promote business creation from the University's intellectual property (angel, VC, corporate start-up, etc.).
 - Identify, assess the applicability, and document the process of obtaining business development financing to the University, Wexford, and interested economic development agencies by December 15, 2009.
 - Obtain this financing during the remainder of FY2009-2010 to support ODU and Wexford business requirements for Innovation Research Park at ODU. Report progress to the University, Wexford, and other agencies monthly. Efforts to obtain financing will be driven by specific opportunities; i.e., assistance for start-up with obtaining VC funding, work with VCC to create ODU Business First funding program, etc.
 - Develop and implement a defined FY2009-2010 project plan.
 - iii. Initiate necessary planning and related development efforts to establish a business accelerator facility in the Innovation Research Parking, Building #2, in collaboration with Wexford and applicable local, state, federal agencies, and private partners.
 - Develop a plan for establishing an appropriate accelerator facility for review and approved by the University and Wexford by February 15, 2009.

- Implement the plan with specific emphasis upon identifying and obtaining public and private financing to support the accelerator and potential tenants.
 - Report progress against the plan during FY2008-2009 and FY2009-2010 to Wexford, the University, and local/regional/state economic development agencies.
- iv. Establish a defined meeting schedule with local, regional, state and federal economic development organizations including the Cities of Norfolk, Virginia Beach, Portsmouth, Suffolk, Chesapeake, Hampton and Newport News; the Hampton Roads Partnership; Hampton Roads Economic Development Alliance; the Hampton Roads Technology Council; the Virginia Economic Development Partnership and related business recruitment and retention agencies. Meet weekly with the Vice President for Administration and Finance and other institutional offices as necessary.
- Reaffirm the single point of contact role for outside organizations and agencies.
 - Develop electronic and print materials in collaboration with the Institutional Advancement Division to promote the economic development initiatives of the institution. By June 1, 2009, produce a comprehensive package of materials that identifies and markets the economic development mission, service and opportunities at the University.
- v. Review progress against Key Activities #1 - #4 with the Vice President for Administration and Finance and Wexford quarterly. Recommend revisions to the priorities as necessary.
- vi. Seek advance approval from the Vice President for Administration and Finance for all employees or agents that will provide services on behalf of Wexford to the University.

2. University's

The University agrees to provide to Wexford the following support:

- a. A Contract administrator (Vice President for Administration and Finance) who will act as liaison with Wexford during the Contract term.
- b. Scheduling meetings and related opportunities to engage University faculty, administrators, and students.
- c. Adequate on-site support to assist Wexford staff in the performance of this Contract.
- d. Timely review and approval of preliminary and final materials.

PROJECT TIMELINE, FEES AND ESTIMATED EXPENSES:

The initial project team will require approximately nineteen (19) months beginning December 1, 2008 with completion scheduled June 30, 2010. The project will require Wexford staff to be on-site during normal business hours Monday through Friday each week. The University and Wexford acknowledge that timelines represent the estimated duration of the project. Wexford will use its best efforts to meet timeliness as noted. However, due to contingencies outside of its control, including the desirability of adequate University input, review and approval, Wexford assumes no specific liability for project completion dates, and is not subject to penalty in the event that project timeless as amended.

Applicable expenses incurred by Wexford and its employees and agents are the responsibility of Wexford, unless otherwise approved in advance by the University. Additionally, the University agrees to reimburse Wexford for additional expenses associated for meetings and travel undertaken at the specific request of the University. Regardless, any and all reimbursable expenses must be documented, approved in advance by the University, and may include but not limited to:

- a. coach airfare, ground transportation, taxis, and mileage;
- b. lodging, tips and meals;
- c. long-distance telephone;
- d. courier, delivery, and postage; and
- f. required media production and reproduction.

Note: Daily per diem shall be in accordance with Commonwealth of Virginia's State Travel Regulations, CAPP Manual Topic No. 20335, specifically "lodging/M&IE" guidelines.

The University and Wexford further acknowledge that delays, cancellations, or disruptions are scheduled project activities that are outside of the reasonable control of Wexford and its employees and agents may occur. Those unforeseen contingencies, provided they are not the result of error or omission on the part of Wexford or its employees and agents, may require additional charges for professional fees, materials, and expenses. In such events, Wexford will use all reasonable efforts to complete project activities as closely as possible to those outlines, and will advise the University of reasonable alternatives to complete the services as identified, which may include additional fees, materials, and expenses computed at the rates outlined herein. In such instances, any and all additional Wexford's proceeding with any reasonable solution(s).

COMPENSATION AND BILLING:

Commencing on January 9, 2009, in return for the delivery of services identified herein, the University agrees to pay Wexford the total sum of \$150,000, payable in twelve (12) equal monthly payments of \$12,500. Additionally, the University agrees to pay Wexford for any and all documented and University approved expenses as required for the project completion. Wexford shall provide monthly invoices to the University throughout the Contract period.

PROPERTY OWNERSHIP AND DISPOSITION:

All proprietary and original research, data, analysis, and recommendations created for the University by Wexford and its employees and agents in connection with this project are intended for University's exclusive use and benefit, and Wexford shall grant University appropriate rights to the full use and enjoyment of all such materials in perpetuity, provided the University has made full payment to Wexford for all outstanding invoices and expenses payable under this Contract. This provision shall survive termination of this Contract.

CONFIDENTIAL INFORMATION:

1. University Responsibility:

The University agrees that its employees and agents shall keep confidential and not disclose in any manner to anyone to the extent permitted by law, any and all identified and agreed to "confidential and protected intellectual properties and trade secrets" that may be employed by Wexford and are intended for the exclusive use and benefit of University without Wexford's prior written consent. This provision shall survive termination of this Contract.

2. Wexford Responsibility:

Wexford shall maintain the confidentiality of all information, data, documents, and other material compiled or developed in connection with the services provided by Wexford under the terms of this Agreement at all times, and shall not disclose the confidential information in any manner to anyone without University's express written instructions or consent. This provision shall survive termination of the agreement.

WAIVER:

The failure of Wexford and the University to exercise any right or remedy available under this Contract upon the other party's breach of the terms, covenants and conditions of this Contract, or the failure to demand the prompt performance of any obligation under this Contract shall not be deemed a waiver of such right or remedy; or the requirement of punctual performance; or of any subsequent breach of default on the part of the other party.

TERMINATION:

If at any time during the term of this Contract, including any and all subsequent renewal option periods, either party considers terminating this Contract; such party shall give the other party thirty (30) days written notice that it is considering such action, which notice shall set for the sufficient specificity such party's reasons for contemplating termination. During the following thirty (30) day period the parties shall discuss, in good faith the party's reasons for considering termination in an effort to avoid the need for such action. Following the thirty (30) day discussion period, the party considering termination, if not fully satisfied, may elect to terminate this Contract by giving the other party sixty (60) days written notice of its intention to terminate, provided, however, neither party may give notice of its intention to terminate during the first ninety (90) days of the operation under this Contract.

In the event of termination, the University agrees to pay Wexford for all partial services performed as of the date of such termination including all documented expenses incurred to that same time and date. Any additional costs and liabilities that may have been incurred by Wexford as a result of Contractual obligations made and entered into in "good faith" with reasonable expectations of successful service delivery as identified in the project scope, all information shall be reviewed jointly between the University and Wexford to determine the extent of liability incurred and the University's obligation to satisfy said liability.

INDEMNIFICATION:

Wexford agrees to indemnify, defend and hold harmless the University, the Commonwealth of Virginia, their officers, agents, and employees from any claims, damages and actions of any kind or nature including attorneys' fees and costs, whether at law or in equity, arising from or caused by the negligent performance of this Contract, including but not limited to, use of any materials, or equipment of any kind, or consumption of any goods or products provided by Wexford and used or consumed by third parties, or any services of any kind or nature provided by Wexford; provided that such liability is not attributable to the sole negligence of the University of the Commonwealth of Virginia. Nothing contained herein shall be deemed an express or implied waiver of the sovereign immunity of the Commonwealth of Virginia.

CONTRACT MODIFICATIONS:

Wexford and the University agree, that upon request from either party and upon written mutual agreement, modifications may be made to this Contract and incorporated into same, as though written herein.

NOTICES:

All notices required or permitted under this Contract shall be in writing and shall be transmitted either by electronic mail (e-mail), facsimile, personal hand delivery, courier, or pre-paid registered mail. The addresses set forth below for the respective parties shall be the places where notices shall be sent, unless written notice of a change of address is given.

University

Harry R. Smithson, Jr., CPPO, Assistant Director
Old Dominion University
4401 Powhatan Avenue, Suite 111
Norfolk, Virginia 23529
Office: 757-683-5107
Fax: 757-683-5108
Email: hrrsmiths@odu.edu

Wexford

Stephen A. Hanssen
Wexford Science & Technology, LLC
7312 Parkway Drive
Hanover, Maryland 21076
Office: 410-579-4879
Fax: 410-579-4890
Email: shanssen@wexfordequities.com

GOVERNING LAW:

This Contract shall be governed by the laws of the Commonwealth of Virginia. The undersigned do hereby attest that they are authorized to enter binding Contractual obligations and on behalf of their respective organizations, and on behalf of those organizations do acknowledge, understand and agree to the Contract in its entirety.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be found thereby.

CONTRACTOR:

Wexford Science & Technology, LLC

BY: _____

Title: _____

Date: _____

PURCHASING AGENCY:

Old Dominion University

BY: _____

Rick Berry, CPPO

Title: Executive Director
Construction & Procurement Services

Date: _____