PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is between the **Office of the Indiana Attorney General** (hereinafter the "State") and **Mosaic Consulting, LLC**, whose address is 3815 River Crossing Parkway, Suite **100, Indianapolis, IN** 46240-7757 (hereinafter "Contractor").

WITNESSETH

WHEREAS, the State has the authority to review activities of nonprofit corporations within the State of Indiana; and

WHEREAS, the Contractor has, among other things, particular expertise and knowledge in the analysis and evaluation of nonprofit corporations, their business transactions and the compliance by nonprofit corporations with various legal requirements.

NOW THEREFORE, in consideration of the premises and the mutual promises herein contained, the State and the Contractor agree as follows:

1. Duties of Contractor

As directed by the State, the Contractor shall review and research certain matters and files relating to nonprofit corporations located within the State of Indiana or other matters falling under the authority of the State, and shall provide an analysis and evaluation of same.

2. Consideration

Contractor shall be paid at the government hourly rate of one hundred fifty dollars ($150.00). The maximum amount of this agreement shall not exceed fifty thousand dollars ($50,000.00).

3. Term

The term of this Agreement will be from January 1, 2005 to December 31, 2005.

4. Access to Records

Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this contract. Contractor shall make such materials available at its offices at all reasonable times during the contract period, and for three (3) years from the date of final payment under the contract, for inspection by the State or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.

5. Assignment

Contractor shall not assign or subcontract the whole or any part of this contract without the State's prior written consent. Contractor may assign its right to receive payments to such third parties as Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The

assignment shall cover all unpaid amounts under this contract and shall not be made to more than one party.

6. Audits

Contractor acknowledges that it may be required to submit to an audit of funds paid through this agreement. Any such audit shall be conducted in accordance with IC 5-11-1, and audit guidelines specified by the State.

7. Authority to Bind Contractor

Notwithstanding anything in the contract to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute contracts on behalf of the Contractor designated above and has obtained all necessary or applicable approvals from the home office of the Contractor to make this contract fully binding upon the Contractor when his/her signature is affixed and is not subject to home office acceptance hereto when accepted by the State of Indiana.

8. Changes in Work

In the event the State requires a major change in scope, character or complexity of the work after the work has progressed, adjustments in compensation to Contractor shall be determined by the State in the exercise of its honest and reasonable judgment. Contractor shall not commence any additional work or the change of the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

9. Compliance with Laws

Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or 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 contract shall be reviewed by the State and Contractor to determine whether the provisions of the contract require formal modification.

10. Confidentiality of Data, Property Rights in Products, and Copyright Prohibition

The Contractor further agrees that all information, data, findings, recommendations, proposals, etc. by whatever name described and by whatever form secured, developed, written or produced by the Contractor in furtherance of this Contract shall be the property of the State. The Contractor shall take such action as is necessary under law to preserve such property rights in and of the State while such property is within the control and/or custody of the Contractor. By this contract, the Contractor specifically waives and /or releases to the State any cognizable property right of the Contractor to copyright, license, patent or otherwise use such information, data, findings, recommendations, proposals, etc.

11. Confidentiality of State Information

Contractor understands and agrees that data, materials and information disclosed to Contractor may contain confidential and protected data. Therefore, Contractor promises and assures that data, material and information gathered, based upon or disclosed to Contractor for the purposes of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the State.

All information, data and reports existing, available and necessary for the carrying out of Contractor's services shall be furnished to Contractor without charge by the State, and the State shall cooperate with Contractor in every way possible in carrying out the scope of Contractor's services.

12. Conflict of Interest

A. As used in this section:

"Immediate Family" means the spouse and unemancipated children of an individual.

"Interested Party" means:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

B. The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.

C. The Department will not exercise its right of cancellation under section B, above, if Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action , including cancellation of this contract, consistent with an opinion of the Commission obtained under this section.

D. Contractor has an affirmative obligation under this contract to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

13. Continuity of Services

A. The Contractor recognizes that the services under this contract are vital to the State and must be continued without interruption and that, upon contract expiration, a successor, either the State or another Contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in-training, and
2. Exercises its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall be allowed as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e. costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

14. Debarment and Suspension

Contractor certifies, by entering into this contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this contract by any federal agency or department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this contract 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 Contractor.

15. Default by State

If the State, sixty (60) days after written notice, fails to cure any breach of this Contract, then Contractor may cancel and terminate this contract and collect all monies due up to and including the date of termination.

16. Disputes

Should any disputes arise with respect to this contract, Contractor and the State agree to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.

Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities as regards all non-disputed work, without delay, any additional costs incurred by the State or Contractor as a result of such failure to proceed shall be borne by Contractor, and Contractor shall make no claim against the State for such costs. If the State and Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of said dispute then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of

the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to Contractor of one or more invoices not in dispute in accordance with the terms of this contract will not be cause for Contractor to terminate this contract, and Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

17. Drug-Free Workplace

Contractor hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this contract a drug-free workplace. Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in Contractor's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or agreement and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this agreement is in excess of $25,000.00, Contractor hereby further agrees that this agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of $25,000.00. No award of a contract shall be made, and no contract, purchase order or contract, the total amount of which exceeds $25,000.00, shall be valid, unless and until this certification has been fully executed by Contractor and made a part of the contract or contract as part of the contract documents.

Contractor certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

B. Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) Contractor's policy of maintaining a drug-free workplace; (3) any available drug consulting, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction.

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

18. Employment Option

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release selected employee from any non-compete contracts that may be in effect. This release will be at no cost to the State or the employee.

19. Ethics

The Contractor shall abide by all ethical requirements that apply to persons who have a business relationship with an agency, as set forth in Indiana Code § 4-2-6 et seq., 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 Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6-12."

20. Force Majeure

In the event that either party is unable to perform any of its obligations under this contract or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies, or communication line failure not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract 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 contract.

21. Funding Cancellation

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 a contract, the contract 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.

22. Governing Laws

This contract shall be construed in accordance with, and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

23. Indemnification

Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits, including court costs, attorney's fees, and other expenses caused by any act or omission of Contractor. The State shall <u>not</u> provide such indemnification to Contractor.

24. Independent Contractor

Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures 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 the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees of the other party. Contractor shall be responsible for providing all necessary unemployment and worker's compensation insurance for Contractor's employees.

25. Licensing Standards

The parties agree that Contractor and its employees will comply with all applicable licensing standards, certification standards, accrediting standards and any other laws or regulations governing services to be provided by the Contractor pursuant to this agreement. State shall not be required to reimburse Contractor for any services performed when Contractor or its employees are not in compliance with such

applicable standards, laws, or regulations. If licensure, certification or accreditation expires or is revoked, Contractor agrees to notify State immediately thereof.

26. Nondiscrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, if any, with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

27. Notice to Parties

Whenever any notice, statement or other communication shall be sent to the State or Contractor, it shall be sent to the following address, unless otherwise specifically advised.

A. Notice to the State shall be sent to:
Office of the Attorney General
Attn: Charles J. Todd
302 West Washington Street, 5th Floor
Indianapolis, IN 46204

B. Notice to Contractor shall be sent to:
Mosaic Consulting, LLC
Attn: Mark Mutz
3815 River Crossing Parkway, Suite 100
Indianapolis, IN 46240-7757

28. Ownership of Documents & Materials

All documents, records, programs, data, film, tape, articles, memos, and other materials developed under this contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such matters will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

29. Payments

All payment obligations shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures.

30. Penalties/Interest/Attorney's Fees

The State 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 required by Indiana law, in part, IC 5-17-5-1 et seq., IC 34-54-8-5, and IC 34-13-1-6.

Notwithstanding the provisions contained in IC 5-17-5, the Parties stipulate and agree that any liability resulting from the State of Indiana's failure to make prompt payment shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

31. Progress Reports

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

32. Renewal Option

This contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. Exercise of this option is at the sole discretion of State and is not subject to contract or acceptance by Contractor.
The renewal term of the contract may not exceed the original term.

33. Severability

The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.

34. Substantial Performance

This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

35. Successors and Assignees

Contractor binds its successors, executors, administrators, and assignees to all covenants of this contract. Except as above set forth, Contractor shall not assign, sublet or transfer any interest in this contract without the prior written consent of the State.

36. Taxes

The State of Indiana is exempt from state, federal and local taxes. The State will not be responsible for any taxes levied on Contractor as a result of this contract.

37. Termination for Convenience

This contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be affected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

38. Termination for Default

A. With the provision of ten (10) days notice to the Contractor, the State may terminate this contract in whole or in part, if the Contractor **fails to:**
   1. Correct or cure any breach of this contract;
   2. Deliver the supplies or perform the services within the time specified in this contract or any extension;
   3. Make progress so as to endanger performance of this contract; or
   4. Perform any of the other provisions of this contract.

B. If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be disputed under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

39. Travel

Expenditures made by the Contractor for travel will be reimbursed by the State at the current rate paid by the State of Indiana. Travel expenses can only be reimbursed in accordance with the State Travel Policies and Procedures as specified in the current

Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

40. Waiver of Rights

No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

41. Work Standards

Contractor agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product or the working relationship with those individuals assigned to work on this contract, the State may request in writing the replacement of any or all such individuals and Contractor shall grant such request.

42. Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member, or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent, or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of this agreement.

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IN WITNESS WHEREOF, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

Mosaic Consulting, LLC

By: J. Mark Mutz
J. Mark Mutz

Date: 2-7-05

Office of the Attorney General

By: Stephen Carter,
Attorney General of Indiana

Date: 2-8-05

APPROVED BY:

DEPARTMENT OF ADMINISTRATION

By: G. Douglas Seidman (for)
Earl Goode,
Commissioner

Date: 2/15/05

STATE BUDGET AGENCY

By: Joel A. Rome (for)
Charles Schalliol,
State Budget Director

Date: 2/21/05

APPROVED AS TO FORM AND LEGALITY:

By: (for)
Stephen Carter,
Attorney General of Indiana

Date: 2/22/05

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