

STATE OF WYOMING
LEGISLATIVE SERVICE OFFICE

CONTRACT FOR CONSULTANT SERVICES WITH THE MICHAEL FLICEK
PROJECTS, LLC
MARCH 2012

I. PARTIES

The parties to this Contract are the Legislative Service Office (hereinafter referred to as "LSO" or the "Agency") and Michael Flicek Projects, LLC (hereinafter referred to as "Contractor").

II. PURPOSE

Consultant shall provide professional consulting services to LSO on an as-requested basis and as outlined in Attachment A, which is attached hereto and made a part of this Agreement. The services to be provided include aiding LSO and the Select Committee on Statewide Education Accountability (hereinafter referred to as "Select Committee") in their work for the Wyoming State Legislature in deploying and refining the Wyoming Accountability in Education Act. The Contractor shall serve as an educational liaison coordinating information and performing tasks as requested by LSO on behalf of the Select Committee and the Legislature and shall advise and consult with the Select Committee, the Legislature and other consultants under contract with LSO, as requested, on the science, method of implementation and other relevant policy issues by the various state agencies of the Wyoming Accountability in Education Act. The services may include consultation in person, by telephone or through electronic means, preparation of written opinions, research briefs and reports, technical guidance, meetings in Wyoming with LSO and other concerned parties, presentations to the Select Committee and the Legislature and assistance in drafting legislation executing Select Committee recommendations.

III. TERM

This Contract is effective when all parties have executed it. The term of the Contract is from March 15, 2012 through June 30, 2013. All services shall be completed during this term. This Contract may be renewed by agreement of both parties in writing. There is no right or expectation of renewal and any renewal will be determined at the discretion of the Agency.

IV. PAYMENT

Contract for Consultant Services with the Michael Flicek Projects, LLC

A. Scope of Work. The Agency agrees to pay Contractor for the services described herein as directed by the Agency and as approved by the co-chairs of the Select Committee and as described in Attachment A, which is attached hereto and made a part of this Contract.

B. Fee Schedule.

1. The Agency agrees to pay the Contractor for the services described herein and in Attachment A, which attached hereto and made a part of this Contract. The total payment for professional services and travel under this Contract shall not exceed one hundred ninety thousand dollars (\$190,000.00). The total payment under this Contract for professional services shall not exceed one hundred seventy-five thousand dollars (\$175,000.00) The total payment under this Contract for travel shall not exceed fifteen thousand dollars (\$15,000.00). Payment will be made monthly upon invoice. No payment shall be made for services performed before the date upon which the last required signature is affixed to this Contract. Fifteen percent (15%) of the total contract shall be retained by Agency until completion of work as outlined in Attachment A is completed in a satisfactory manner. Satisfactory completion includes providing the periodic updates and final reports on October 1 and November 1, 2012 and attendance of all meetings noted in Attachment A, which is attached hereto and made a part of this Agreement.

2. The Agency agrees to pay the Contractor and its personnel a fee of one hundred fifteen dollars (\$115.00) per hour for the professional services described herein and in Attachment A, which is attached hereto and made a part of this Contract. The Contractor shall maintain records of time worked by its personnel and expense documentation to support any audits the Agency may require.

3. The payment of actual travel expenses shall be allowed under this Contract. Contractor is expected to procure the most cost efficient travel arrangements. Meals shall be paid based on actual costs, supported by a copy of the original receipt with the invoice. Lodging shall be paid based on actual costs, supported by a copy of the original receipt with the invoice. The Agency shall only be invoiced for the basic room rate including taxes and lodging fees. The Agency is not responsible for incidentals or miscellaneous expenses charged to the room charge. Incidental and miscellaneous

expenses which the Agency shall not be responsible for include but are not necessarily limited to alcohol, telephone charges, movies, etc. Mileage shall be paid at the rate of \$.55 per mile based on standard map mileage.

4. Except as otherwise provided in this Contract, the Contractor shall pay all costs and expenses incurred by it or on its behalf in connection with its performance and compliance with all its obligations under this Contract.

C. Billing Procedures.

1. The Agency shall pay the Contractor for work performed in accordance with the scope of work described herein and in Attachment A, which is attached hereto and made a part of this Contract, as directed by the Agency, upon completion of work and acceptance of the deliverable by the Agency.

2. The Agency shall approve the estimated budget in advance of commencement of work by email. Subsequent billing invoices shall be submitted to the Agency at LSO, Room 213 State Capitol, Cheyenne, WY 82002, monthly for activities and costs accrued since the last billing. Invoices shall be promptly processed for payment not later than fifteen (15) days after their receipt by the Agency.

V. GENERAL PROVISIONS

A. Amendments. Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the Parties to this Contract shall be incorporated by written instrument, executed and signed by all Parties to this Contract.

B. Americans with Disabilities Act. The Contractor shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, et seq., and any properly promulgated rules and regulations related thereto.

C. Applicable Law/Venue. The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the Parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

D. Assignment/Contract Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Agency.

E. Audit/Access to Records. The Agency and any of its representatives shall have access to any books, documents, papers and records of the Contractor which are pertinent to this Contract. The Contractor shall, immediately upon receiving written instruction from the Agency, provide to the Agency all books, documents, papers and records of the Contractor which are pertinent to this Contract including any records relating to any payment or request for payment under this Contract. The Contractor shall cooperate fully with any audit by or on behalf of the Agency. The Agency may perform one (1) or more audits anytime after the effective date of this Contract, at the place of business of the Contractor, and before one (1) year after the date of final payment under this Contract. If an audit is performed at a location other than the Contractor's place of business, the Contractor shall be reimbursed by the Agency for associated expenses.

F. Award of Related Contracts. The Agency may undertake or award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other Contractors and the Agency in all such cases.

G. Compliance with Laws. The Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

H. Conflicts of Interest. Contractor shall not engage in providing consultation or representation of clients, agencies, or firms which may constitute a conflict of interest which results in a disadvantage to the Agency or a disclosure which would adversely affect the interests of the Agency. Contractor shall notify the Agency of any potential or actual conflicts of interest arising during the course of the Contractor's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of the contract will be subject to a mutual settlement of accounts. In the event the Contract is terminated under this provision, the Contractor shall take steps to insure that the file, evidence, evaluation and data are provided to the Agency or its designee. This does not prohibit or

affect the Contractor's ability to engage in consultations, evaluations or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.

A conflict of interest warranting termination of the Contract includes, but is not necessarily limited to, representing a client in an adversarial proceeding against the State of Wyoming, its agencies, boards, commissions, or the University of Wyoming, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition or quo warranto.

I. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs and any other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Agency for its release.

J. Disputes/Remedies. In seeking to resolve any dispute relating to this Contract, the Agency does not waive its sovereign immunity. Any dispute or claim arising out of or relating to this Contract may be assigned to non-binding mediation upon mutual agreement of the Parties, in accordance with the Wyoming Supreme Court's rules for alternative dispute resolution. The Parties to the dispute shall bear their respective costs for the mediation. The rights and remedies of the Parties provided for in these clauses are in addition to any other rights and remedies provided by law or under this Contract.

K. Ethics. Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (W.S. 9-13-101, et seq.), and any and all ethical standards governing Contractor's profession.

L. Entirety of Contract. This Contract, consisting of ten (10) pages, and Attachment A, consisting of five (5) pages, represents the entire and integrated Contract between the Parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

M. Extensions. Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Agency and shall be effective only after it is reduced to writing and executed by all Parties to the Contract. Any agreement to extend this Contract shall include, but not necessarily be limited to:

Contract for Consultant Services with the Michael Flicek Projects, LLC

1. An unambiguous identification of the Contract being extended;
2. The term of the extension;
3. The amount of any payment to be made during the extension or a statement that no payment will be made during the extension;
4. A statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and
5. If the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

N. Force Majeure. Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

O. Indemnification. The Contractor shall hold harmless the State of Wyoming, the Agency and their officers, agents, employees, successors and assignees from any personal injury or property damage resulting from the performance of the Contractor or any of its employees or agents under this Contract. Neither party to this Contract shall be liable to any third party for personal injury or property damage caused by the negligence of the other party to this Contract; rather, each party shall be liable in accordance with law for damages caused by its own negligence.

P. Independent Contractor. The Contractor shall function as an Independent Contractor for the purposes of this Contract, and shall not be considered an employee of the State of Wyoming or the Agency for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred

by the Contractor in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency, or to incur any obligation of any kind on the behalf of the State of Wyoming or the Agency. The Contractor agrees that no health/hospitalization benefits, workers' compensation or similar benefits available to employees of the State of Wyoming or the Agency will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Contract.

Q. Kickbacks. The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Contract. If the Contractor breaches or violates this warranty, the Agency may, at its discretion, terminate this Contract without liability to the Agency, or deduct from the Contract price or consideration or otherwise recover the full amount of any commission, percentage, brokerage or contingency fee.

R. Monitor Activities. The Agency shall have the right to monitor all Contract related activities of the Contractor and all subcontractors. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe all Contractor personnel in every phase of performance of Contract related work.

S. Notices. All notices arising out of or from the provisions of this Contract shall be in writing and given to the Parties at the address provided under this Contract, either by regular mail, facsimile or delivery in person.

T. Notice and Approval of Proposed Sale or Transfer of the Contractor. The Contractor shall provide the Agency with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notice provision of this Contract. If the Agency determines that the proposed merger, consolidation, sale or transfer of assets is not consistent with the continued satisfactory performance of the Contractor's obligations under this Contract, then the Agency may, at its option, terminate or renegotiate the Contract.

U. Ownership of Documents/Work Product. All documents, reports, records, field notes, materials and data of any kind resulting from performance of this Contract are at all times the property of the Agency and shall be submitted to the Agency in an organized and indexed format upon completion of this Contract.

V. Patent or Copyright Protection. The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Agency for any violation or alleged violation of such patent, trademark, copyright, license or other restrictions.

W. Publicity. Any publicity given to the services provided pursuant to this Contract, including but not limited to notices, information, pamphlets, press releases, research, reports and similar public notices prepared by or for the Contractor, shall not be released without prior written approval from the Agency.

X. Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect and either party may renegotiate the terms affected by the severance.

Y. Sovereign Immunity. The State of Wyoming and the Agency do not waive sovereign immunity by entering into this Contract, and specifically retain immunity and all defenses available to them as sovereigns pursuant to W.S. 1-39-104(a) and all other state law.

Z. Waiver. Failure to object to a breach of any term or condition of this Contract shall not constitute a waiver of any prior or subsequent breach.

VI. SPECIAL PROVISIONS

A. Authority to Sign. The Director of the Legislative Service Office is empowered to be the signatory on all contracts, agreements or modifications pertaining to this project on behalf of the Agency. Michael Flicek is empowered to be the signatory on all contracts, agreements or modifications pertaining to this project on behalf of the Contractor. Such agreements, etc., not bearing these signature or that of a designee are invalid insofar

as contractual relations between the Agency and Contractor are concerned.

B. LSO Mailing Address. The official mailing address and number for transmitting facsimiles for the Agency for the purpose of administering this Contract are:

Dan J. Pauli, Director
Legislative Service Office
213 Capitol Building
Cheyenne, WY 82002
Phone: (307-777-7881
Fax: (307) 777-5466

C. Contractor Mailing Address. The official mailing address and number for transmitting facsimiles for the Contractor for the purpose of administering this Contract are:

Michael Flicek, Ed.D., Owner
Michael Flicek Projects, LLC.
2732 S. Poplar Street
Casper, WY 82601
Phone: 307-259-3963

D. Subcontractors. On and after the effective date of this Contract, the Contractor shall not enter into any subcontracts for any of the work contemplated under this Contract without prior written notice to the Agency. The Agency shall have ten (10) days following written notification of the use of any subcontractor, outside associate or consultant to perform any portion of this Contract to object to the subcontractor, outside associate or consultant, or perform the services itself if the Agency determines it can provide the services. If reasonable grounds for the objection exist, the Agency and the Contractor shall then negotiate in good faith for the selection of an alternative party.

E. Termination of Contract. This Contract may be terminated, with or without cause, by either party upon thirty (30) days written notice. This Contract may be terminated immediately for cause if the Contractor fails to perform in accordance with the terms and conditions of this Contract. Should the Contractor fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Contractor performs its duties and responsibilities.

F. Restrictions on Communication. In performing its responsibilities under this Contract, the Contractor agrees to obtain approval of the Agency in advance with respect to all communications with legislators and all other Wyoming state and local government officials regarding the final report and any recommendations under this Contract. The Contractor shall not communicate with the media or any other member of the public with respect to any reports and any recommendations under this Contract without the prior approval of the Agency, except to acknowledge that a contract with the Agency for the performance of services does exist and to describe the structure of Contractor.

For violation of this provision, the Agency reserves the right to terminate the Contract.

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VII. SIGNATURES. In witness thereof, the Parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the days and dates set out below, and certify that they have read, understood and agreed to the terms and conditions of this Contract.

The effective date of this Contract is the date of the signature last affixed to this page.

Date:

Date:

AGENCY

CONTRACTOR

Dan J. Pauli, Director
Legislative Service Office

Michael Flicek, Ed.D, Owner
Michael Flicek, LLC

STATE OF WYOMING
LEGISLATIVE SERVICE OFFICE

CONTRACT AMENDMENT NUMBER ONE TO THE CONTRACT FOR CONSULTANT SERVICES WITH
MICHAEL FLICEK PROJECTS, LLC
OCTOBER 2012

1. **Parties.** The parties to this Amendment are the Legislative Service Office (hereinafter referred to as "LSO" or the "Agency") and the Flicek Projects, LLC, (hereinafter referred to as "Contractor").
2. **Purpose of Amendment.** This Amendment shall constitute the first amendment to the Contract between the Agency and the Contractor which was duly executed on and which became effective April 2, 2012. The purpose of this Amendment is to increase the number of hours allowed by the original contract by five hundred and twenty two (522) hours, provide additional funds for this work and increase the duties to be performed by the Contractor.

The original contract, effective April 2, 2012, required the Contractor provide services to assist the Legislature, the Select Committee on Statewide Education Accountability (herein after referred to as the "Select Committee) and the Agency in compliance with 2012 Wyo. Sess. Laws, Ch. 26, Section 328 and serve as the educational liaison for the total contract amount of one hundred ninety thousand dollars (\$190,000.00), with an expiration date of June 30, 2013. The original contract provided for approximately fifteen hundred and twenty (1520) hours of service by the Contractor or its subcontractor.

3. **Term of the Amendment.** This Amendment shall commence on upon the date the last required signature is affixed hereto, whichever is later, and shall remain in full force and effect through June 30, 2013.

4. **Payment.**

A. Scope of Work. The Agency agrees to pay Contractor for the services described herein as directed by the Agency and as approved by the co-chairs of the Select Committee.

B. Fee Schedule.

1. The total payment under this Amendment shall not exceed an additional sixty thousand and thirty dollars (\$60,030.00) for professional services. This amount shall be in addition to the amounts funded under the original Contract for Consultant Services executed and effective April 2, 2012. Payment will be made monthly upon invoice. No payment shall be made for services performed before the date upon which the last required signature is affixed to this Contract.

2. The Agency agrees to pay the Consultant in accordance with the terms and conditions as provided in the original Contract for Consultant Services executed and effective April 2, 2012.

5. **Additional Responsibilities of Contractor.** The Contractor shall provide the Agency approximately five hundred (500) additional hours of work than contemplated by the original contract. In addition to the work prescribed by the original contract, the Contractor shall review proposed legislation and all amendments during the 2013 legislative Contract for Consultant Services with the Michael Flicek Projects, LLC

session as assigned by the Agency and the Select Committee. The Contractor shall provide technical guidance and assistance regarding the practical application of the legislative mandates as assigned by the Agency and the Select Committee.

The additional hours allotted by this amendment will be allocated in approximately the following manner:

Task	Approximate Hours per Task¹	Total
Attending (and presenting if requested) at State Board of Education Meetings;	60	\$6,900
Attending (and presenting when appropriate) at Select Committee on Statewide Education Accountability Meetings;	75	\$8,625
Advisory Committee Meetings;	55	\$6,325
Attending Wyoming Department of Education Meetings ² ;	100	\$11,500
Meetings with LSO or other staff for updates and task assignment;	70	\$8,050
Preparation, analysis, drafting of reports, feedback and response to inquiries as requested. ³	162	\$18,630
Total Additional Budget	522 hours	\$60,030

6. **Additional Responsibilities of Agency.** The Agency shall have no additional responsibilities or duties as a result of this Amendment.

7. **Special Provisions**

A. Same Terms and Conditions. With the exception of items explicitly delineated in this Amendment, all terms and conditions of the Contract between the Agency and the Contractor, including but not limited to sovereign immunity, and including all prior amendments to this Contract shall remain unchanged and in full force and effect.

8. **General Provisions**

A. **Entirety of Contract.** This Amendment, consisting of four(4) pages, and the Original Contract consisting of nine (9) pages, and Attachment A to the Original Contract, consisting of nine (9) pages, represent the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

¹ Michael Flicek Projects, LLC charges only for actual time used. The hourly rate for service is one hundred and fifteen dollars (\$115). The amount budgeted reflects estimates based upon the hourly rate for the services of Michael Flicek and Ruth Sommers.

² Additional task, not included in original contract.

³ This task will include the legislative work described herein.

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9. **Signatures.** The parties to this Amendment through their duly authorized representatives have executed this Amendment, known as Amendment One to the Contract between the Agency and the Contractor, on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Amendment as set forth herein.

The effective date of this Amendment is the date of the signature last affixed to this page.

Date:

Date:

AGENCY

CONTRACTOR

Dan J. Pauli, Director
Legislative Service Office

Mike Flicek, Ed.D., Owner
Michael Flicek Projects, LLC