

Independent Contractor Agreement: Executive Director to the Independent Legislative Ethics Commission

1. DEFINITIONS

As used in this AGREEMENT:

- 1.1** "AGREEMENT" means this "Independent Contractor Agreement: Executive Director to the Independent Legislative Ethics Commission" between the COMMISSION and (contractor).
- 1.2** "COMMISSION" means Independent Legislative Ethics Commission for the state of Utah.
- 1.3** "COMMISSION MEETING" includes all meetings, hearings, and proceedings of the COMMISSION.
- 1.4** "(Contractor)" means (contractor), an independent contractor.
- 1.5** "EXECUTIVE DIRECTOR" means the executive director to the COMMISSION.
- 1.6** "LEGISLATURE" means the Utah State Legislature, its members, staff, staff offices, and all employees and agents of the Utah State Legislature and of its staff offices.
- 1.7** "RFP" means the Request for Proposals to the Independent Legislative Ethics Commission for the state of Utah for "Executive Director to the Independent Legislative Ethics Commission 2010-A" and all addenda thereto.

2. PARTIES

This AGREEMENT is between the COMMISSION and (contractor).

3. DUTIES OF (contractor)/EXECUTIVE DIRECTOR

In exchange for the consideration described in Section 5 of this AGREEMENT, (contractor) shall act in the capacity of, and fulfill the duties of, EXECUTIVE DIRECTOR. The duties of the EXECUTIVE DIRECTOR are as follows:

3.1 Chief Administrator

Work, under the direction of the COMMISSION, as the chief administrator to the COMMISSION.

3.2 General Administrative Duties

- Maintain COMMISSION website
- Analyze, prepare, maintain, and execute COMMISSION's budget
- Conduct purchasing for the COMMISSION
- Collect and disseminate statistical data and program summaries
- Direct internal affairs of the COMMISSION to ensure efficient operation of the COMMISSION
- Ensure that the COMMISSION complies with all constitutional, statutory, and legislative mandates
- Track and analyze COMMISSION data
- Create, modify as necessary, and maintain systems for monitoring data
- Develop and maintain privacy and security safeguards for data
- Receive, manage, and draft COMMISSION correspondence
- Custodian of records for the COMMISSION
- Properly classify records under the Government Records Access and Accountability Act
- Respond to public records requests
- Prepare COMMISSION agenda and materials
- Prepare annual report of the COMMISSION
- Ensure compliance with deadlines and with due process rights of parties
- Draft findings, decisions, and orders of the COMMISSION

3.3 Policy and Rules

- Assist the COMMISSION in formulating and implementing COMMISSION policies and in recommending rules to be adopted by the Utah Legislature relating to the COMMISSION
- Assist the COMMISSION in formulating and implementing policies relating to COMMISSION MEETINGS
- Recommend changes to COMMISSION policies and to legislative rules relating to the COMMISSION
- Assess how casework should flow through the COMMISSION
- Analyze and innovate COMMISSION policies
- Develop and implement tactical plans resulting in more efficient operation of the COMMISSION

3.4 COMMISSION MEETINGS

- Arrange and schedule COMMISSION MEETINGS, including location and time
- Provide public and other legal notice of COMMISSION MEETINGS
- Attend and record COMMISSION MEETINGS
- Ensure compliance with the Open and Public Meetings Act
- Assist in the conduct of COMMISSION MEETINGS
- Produce written minutes of COMMISSION MEETINGS
- Prepare and serve subpoenas
- Draft documents relating to COMMISSION MEETINGS

3.5 Ethics Complaints

- Receive complaints
- Create and maintain case files
- Promptly notify COMMISSION members of the receipt of complaints
- Provide copies of complaints to COMMISSION members
- Prepare case documentation
- Review and track complaints
- Ensure adherence to all relevant deadlines
- Assist the COMMISSION in making determinations regarding jurisdiction
- Determine and provide legally required notice
- Thoroughly investigate complaints, including:
 - gathering facts and documents
 - interviewing witnesses
- Present investigation results to the COMMISSION
- Ensure compliance with policies, rules, law, and due process requirements
- Conduct and present research of ethics questions
- Provide guidance on legal requirements and procedures relating to ethics complaints, proceedings, and questions
- Ensure that the COMMISSION follows required and proper procedures
- Make recommendations to the COMMISSION regarding commission action and decisions

3.6 Other Duties

- Provide administrative and technical support to the COMMISSION
- Responsible for day-to-day operations of the COMMISSION
- Serve as liaison between the COMMISSION and other persons or entities
- Recommend appropriate changes to statutes, legislative rules, and COMMISSION policies
- Develop and recommend changes in forms distributed by the COMMISSION to improve the clarity of information presented to the public and to improve the

- usefulness of the information
- Properly apply privacy, confidentiality, and conflict of interest principles and procedures

4. REPRESENTATIONS

(Contractor) represents that (contractor):

- 4.1** Has sufficient knowledge and expertise to enable (contractor) to fulfill the duties described in Section 3.
- 4.2** Has the ability to understand, analyze, and organize a large amount of information in a short time.
- 4.3** Is familiar with, and has the ability to determine and understand, the management, operation, and function of the COMMISSION and the legal requirements relating to the COMMISSION.
- 4.4** Is familiar with, and will comply with, the law governing the COMMISSION and the laws governing the state of Utah.
- 4.5** Has the ability to apply general principles of ethics to multi-faceted circumstances in order to complete assignments.
- 4.6** Has the ability to independently perform all duties described in Subsection 3.
- 4.7** Is familiar with the general principles of legislative ethics found in the Utah Constitution, statute, rule, and case law.
- 4.8** Is familiar with budget requirements, Utah procurement law, the Open and Public Meetings Act, and the Government Records Access and Management Act.
- 4.9** Has the ability to apply knowledge of case management systems and complex legal and ethical concepts.
- 4.10** Understands, and will apply, privacy, confidentiality, and conflict of interest principles.

5. PAYMENT

In exchange for the timely completion of the duties described in Section 3 of this AGREEMENT and fulfillment of the other terms and conditions of this AGREEMENT, COMMISSION agrees to pay (contractor) _____, in the following manner:

- 5.1** _____ is the maximum amount that the COMMISSION is required to pay (contractor) for services provided to the COMMISSION by (contractor).
- 5.2** Neither the LEGISLATURE nor any other person or entity, other than the COMMISSION (as provided in Section 5.1) is required to pay (contractor) any compensation.
- 5.3** The workload of the EXECUTIVE DIRECTOR will fluctuate and is difficult to predict. A substantial amount of work will be initially required in order to: establish policies; develop forms; and provide other general administrative services to the COMMISSION. Moreover, the workload and required time commitment of the EXECUTIVE DIRECTOR can fluctuate substantially based on the number and complexity of complaints received. (Contractor) will perform all duties of the EXECUTIVE DIRECTOR regardless of the actual amount of hours worked for no more than _____.

6. INDEPENDENT CONTRACTOR

- 6.1** (Contractor) is an independent contractor and is not authorized, expressly or by implication, to bind the COMMISSION, the LEGISLATURE, the state of UTAH, or any member, office, officer, department, agent, official, or employee of the COMMISSION, the LEGISLATURE or the state of Utah to any settlement or liability. Moreover, (contractor) is not authorized, expressly or by implication, to bind the LEGISLATURE, the state of Utah, or any member, office, officer, department, agent, official, or employee of the LEGISLATURE or the state of Utah to any agreement or understanding or to perform any act as agent thereof.
- 6.2** (Contractor) is solely responsible to pay for all of (contractor's) taxes, materials, travel, costs, and expenses and to pay each employee or subcontractor of (contractor) all wages, payments, expenses, fees, taxes, costs, insurance, and benefits of any kind relating to an employee or contractor of (contractor).
- 6.3** (Contractor) is not an employee of the COMMISSION, the LEGISLATURE, the state of Utah, or any member, office, officer, department, agent, official, or employee of the COMMISSION, the LEGISLATURE or the state of Utah and is not entitled to any wages, insurance, or benefits therefrom.
- 6.4** (Contractor) is responsible for (contractor's) own tax reporting, withholding, and payment.

7. INDEMNITY

(Contractor) shall indemnify, defend, and hold forever harmless the COMMISSION, the LEGISLATURE, the state of Utah, and each member, office, officer, department, agent, official, and employee of the COMMISSION, the LEGISLATURE, and the state of Utah, in their individual and representative capacities, from and against any and all costs, losses, liabilities, damages, lawsuits, and claims, including, but not limited to, any claim for personal injury, death, or damage to personal property, or expenses (whether or not arising out of third-party claims), including without limitation court costs, reasonable attorney fees and disbursements, and all amounts paid in investigation, defense, or settlement in connection with, arising out of, resulting from, or relating to, negligence of (contractor) and any services provided by, or action taken by, (contractor) under this AGREEMENT. The indemnification provided by (contractor) is not and may not be limited in any way for the amount or type of damages, compensation, or benefits payable by or for (contractor) or (contractor's) employees, agents, or subcontractors under workers' compensation acts, disability benefits acts, or other employee benefits acts. The remedy provided to the COMMISSION, the LEGISLATURE, the state of Utah, and each member, office, officer, department, agent, official, and employee of the COMMISSION, the LEGISLATURE, or the state of Utah by this indemnification is in addition to, and not in lieu of, any other remedy available under this AGREEMENT or otherwise. This indemnification obligation is not diminished or limited in any way to the total limits of insurance required for, obtained by, or available to the (contractor) or (contractor's) employees, agents, or subcontractors.

8. SUBMISSION TO FINANCIAL AUDIT

(Contractor) and (contractor's) agents or subcontractors agree to participate in a financial audit to ensure compliance with the provisions of this AGREEMENT upon written request by the COMMISSION, under the following terms and conditions:

- 8.1** The audit may be performed by the COMMISSION or an authorized representative of the COMMISSION.
- 8.2** The audit may be performed no later than three years after the date of termination of this AGREEMENT.

9. PROHIBITION OF PAYMENT BY OTHER GRANT OR CONTRACT

Services performed under this AGREEMENT by (contractor) or any of (contractor's) employees, agents, or subcontractors may not be paid by any other grant or contract.

10. ASSIGNMENT PROHIBITED

(Contractor) may not assign this AGREEMENT, nor any duty or benefit relating to this AGREEMENT, without the prior written permission of the COMMISSION.

11. LIMITATIONS ON LOBBYING

Beginning on _____, and ending on _____, neither (contractor) nor any employee, agent, or subcontractor of (contractor) may communicate with a public official as defined in Utah Code Section 36-11-102 for economic consideration for the purpose of influencing the passage, defeat, amendment, or postponement of any legislative or executive action.

12. FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

(Contractor) attests that (contractor) is in good standing with all state, county, or federal agencies with whom (contractor) has a current, or has had a prior, contractual arrangement. Contractor further attests that there are no current or prior contractual or financial relationships between (contractor) or (contractor's) employees, agents, or subcontractors and the members of the COMMISSION or the LEGISLATURE, or a person or entity that is likely to receive a financial benefit or a financial setback based on (contractor) acting as the EXECUTIVE DIRECTOR.

13. TERMINATION OF AGREEMENT

13.1 This AGREEMENT terminates on _____.

13.2 This AGREEMENT may be terminated at any time before _____, if any of the following occur:

13.2.1 The COMMISSION unilaterally terminates this AGREEMENT at an earlier date.

13.2.2 If the COMMISSION materially breaches this AGREEMENT and, following the breach:

13.2.2.1 (contractor) gives written notice of the breach to the COMMISSION; and

13.2.2.2 at least fifteen days after the day on which the COMMISSION receives the notice described in Section 13.2.2.1, (contractor) sends a written notice of termination to the COMMISSION, unless, before the end of the fifteen-

day period described in this Section 13.2.2.2, the COMMISSION cures the breach.

13.3 If this AGREEMENT terminates under Section 13.1, (contractor) is not relieved of (contractor's) obligations under Sections 6 through 11, 13 through 16, and 18 through 21 of this AGREEMENT.

13.4 If this AGREEMENT terminates under Section 13.2.1:

13.4.1 (contractor) is not relieved of (contractor's) obligations under Sections 6 through 11, 13 through 16, and 18 through 21 of this AGREEMENT and is not excused for any failure to comply with any of the terms and conditions of this AGREEMENT prior to the termination of this AGREEMENT; and

13.4.2 payment and other terms relating to the services performed under this AGREEMENT will be _____.

13.5 Termination under Section 13.2.2 does not relieve either party of liability for any default prior to the termination.

14. GOVERNING LAW

This AGREEMENT shall be construed in accordance with, and governed by, the law of the state of Utah, without reference to principles governing choice or conflicts of laws. The parties will submit to the jurisdiction of the courts of the state of Utah for any dispute arising out of this AGREEMENT or the breach of this AGREEMENT. Venue shall be in Salt Lake City, Utah, in the Third Judicial District Court for Salt Lake County.

15. EQUAL OPPORTUNITY

(Contractor) agrees to abide by the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order 11246, as amended, which prohibits discrimination on the basis of sex, 45 CFR 90, which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disabilities. (Contractor) further agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

16. SEVERABILITY

A declaration by any court, or any other binding legal source, that any provision of this AGREEMENT is illegal and void does not affect the legality and enforceability of any other provision of this AGREEMENT, unless the provisions are mutually dependent.

17. DEBARMENT

(Contractor) certifies that neither (contractor) nor (contractor's) principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any government department or agency from participation in this AGREEMENT. If (contractor) cannot certify this statement, (contractor) has provided to the COMMISSION and attached to this AGREEMENT a full written explanation of (contractor's) inability to certify this statement before the execution of this AGREEMENT.

18. INCORPORATION OF PROVISIONS OF RFP

The provisions of the RFP are hereby incorporated into this AGREEMENT by reference. If any conflict exists between the RFP and this AGREEMENT, the terms and conditions of this AGREEMENT prevail.

19. MERGER

This AGREEMENT constitutes the entire agreement between the parties with respect to the subject matter contained in this AGREEMENT. There are no covenants, terms, or conditions, express or implied, written or unwritten, that govern the subject matter of this AGREEMENT, except as expressly described in this AGREEMENT. This AGREEMENT supersedes all prior agreements between the parties relating to all or part of the subject matter contained in this AGREEMENT.

20. MODIFICATION OF AGREEMENT

This AGREEMENT may be modified only in a written document:

20.1 signed by the chair of the COMMISSION on behalf of the COMMISSION, after a majority vote of the COMMISSION authorizes the modification and

20.2 signed by _____, on behalf of (contractor).

21. AUTHORITY TO BIND

(Contractor) and the person who signs this AGREEMENT on behalf of (contractor) represent that the person who signs this AGREEMENT has the authority to bind

(contractor), and does, by signing this AGREEMENT, bind (contractor) to the terms and conditions of this AGREEMENT.

In witness whereof the parties have executed this AGREEMENT as follows: