

DRAFT: November 7, 2019

CONSULTANT SERVICES AGREEMENT

This Services Agreement (the “Agreement”) is between Augenblick, Palaich and Associates, Inc. (“APA”), located at 1547 Gaylord St., Denver, Colorado 80206, and the Bureau of Legislative Research (“BLR”), located in the State Capitol Building, Room 315, 500 Woodlane Street, Little Rock, Arkansas 72201. APA provides education adequacy consulting services. The BLR desires to hire APA to provide detailed and accurate information concerning the current efficacy of the biennial adequacy study and evaluation in the State of Arkansas, as well as recommendations regarding potential legislative reforms, as set forth in RFP No. BLR-190003 and APA’s response to the RFP (the “Services”), for the use and information of the House Committee on Education and the Senate Committee on Education (the “Committees”) and the members of the Arkansas General Assembly.

APA and the BLR hereby agree as follows:

1. **Services to be performed.** The BLR hereby retains APA to perform the Services as set forth in RFP No. BLR-190003 (the “RFP”) and APA’s Proposal in response to the RFP, as submitted on September 19, 2019, including APA’s Official Proposal Price Sheet, as supplemented via email on October 2, 2019 (the “Proposal”). Any and all assumptions stated by APA in the Proposal shall not be considered part of this Agreement. The RFP and the Proposal are attached hereto and incorporated into this agreement by reference as Attachment A.
2. **Data Required by APA.** In order to perform the Services, APA may require information that is held by various entities other than the BLR, including without limitation the Department of Education, local school districts, and various private entity stakeholders. The parties acknowledge that such data and information is in the possession of third parties; that APA must rely on these third parties to cooperate in providing this data and information; and that the data and information may be subject to laws restraining or preventing their release or dissemination. BLR authorizes APA to contact the various entities holding the information that APA requires in order to perform the Services under this Agreement. BLR Staff will be available to help to facilitate the contact with these entities upon request from APA. BLR acknowledges and agrees that while APA is relying on this data and information from such third parties in connection with its provision of the services under this Agreement, APA makes no representation with respect to and shall not be responsible for the accuracy or completeness of such data and information.
3. **Deliverables.** In connection with the services to be provided under the RFP, APA will prepare various documents, including without limitation reports and status updates to the Committees, completed research requests for the Committees, a final report of its work, assistance with recommendations and draft legislation of the Committees, and attendance at other legislative committee meetings, as authorized by the Committee chairs (the “Deliverables”) to be provided to the BLR for use by the Committees and the Arkansas General Assembly. BLR will own all Deliverables provided under this Agreement.

APA will maintain full ownership of: (a) working papers of APA; (b) pre-existing APA materials or studies used in the provision of the Services and the Deliverables; (c) APA know-how and processes used in the provision of the Services and Deliverables as well as any and all intellectual property owned by APA that may be employed in

providing the Services and Deliverables. APA is providing the Services and Deliverables for the use and benefit of the Committees and the Arkansas General Assembly. The Services and Deliverables are not for a third party's use, benefit or reliance, other than members of the General Assembly and as authorized by the Committee Chairs. Except as described in Section 10 of this Agreement, APA shall not discuss the Services or disclose the Deliverables until such time that the BLR provides APA notice that the BLR has disclosed the Services and Deliverables to third parties.

4. **Term and Termination.** The term of this Agreement will commence on November 15, 2019, and terminate on December 31, 2020, with an option to renew for an additional six (6) month period upon mutual agreement of the parties if the need of the Committees or the Arkansas General Assembly merits an extension.

Either party may terminate the Agreement by giving ten (10) days prior written notice.

5. **Fees and Expenses.** The Fees and Expenses related to this Agreement are outlined in the Official Proposal Price Sheet that is part of the Proposal and incorporated in this Agreement by reference. The maximum amount BLR will pay to APA for the provision of the Services is Six Hundred Fifty-Nine Thousand Five Hundred Eighty Dollars (\$659,580.00). On a monthly basis (*e.g.* December 15, 2019, January 15, 2020, February 15, 2020) APA shall submit itemized invoices to the BLR, per the requirements set forth in the RFP, based upon the per unit and per hour pricing set forth in the Proposal. The monthly invoices will include reimbursements for travel related to the field work being performed by APA and attendance at legislative committee meetings. All mileage amounts will be calculated per Mapquest and copies of the Mapquest routes will be provided to the BLR with the monthly invoices, as well as copies of receipts for reimbursement of actual travel expenses.
6. **Governing Law.** This Agreement shall be governed by the laws of the State of Arkansas, without regard to Arkansas's conflict of law principles. APA agrees that any claims against the BLR, whether arising in tort or in contract, shall be brought before the Arkansas Claims Commission, as provided by Arkansas law, and shall be governed accordingly. Nothing in this Agreement shall be construed as a waiver of sovereign immunity of the BLR, the Committees, the Legislative Council, or the Arkansas General Assembly.
7. **Assignment.** This Agreement may not be assigned without the prior written consent of both parties, which either party may withhold for any reason. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
8. **Subcontractors.** APA has listed several subcontractors in the Proposal. If at any point during the contract term APA finds it necessary to use an additional or different subcontractor, APA shall seek prior approval of the Committees before contracting any part of the work to be performed under this Agreement. The Committees shall have the right to require replacement of any subcontractor found to be unacceptable by the Committees.
9. **Amendment.** This Agreement may be amended upon agreement of both parties to the Agreement and the approval of the Committees and the Legislative Council. Any amendment to this Agreement must be in writing and signed by both parties.

10. **Confidentiality.** “Confidential Information” under this Agreement means non-public information that a party marks as “confidential” or “proprietary” or that otherwise should be understood by a reasonable person to be confidential in nature. Confidential information does not include any information which is (a) rightfully known to the recipient prior to its disclosure; (b) released to any other person or entity (including governmental agencies) without restriction; (c) independently developed by the recipient without use of or reliance on Confidential Information; or (d) or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from a non-party.

Each party will protect the confidentiality of Confidential Information that it receives under the Agreement except as required by applicable law, rule, regulation, or professional standard, without the other party’s prior written consent. Due to the BLR being a public entity within the State of Arkansas, all terms of this Agreement, including but not limited to fee and expense structure, are subject to disclosure under the Freedom of Information Act of 1967, Ark. Code Ann. § 25-19-101, *et seq.*

If disclosure of APA’s Confidential Information is required by law, rule, regulation, or professional standard, (including any subpoena or other similar form of process), the BLR shall provide APA with prior prompt written notice thereof.

In consideration of APA’s and BLR’s agreement to provide one another with access to their respective Confidential Information, APA and BLR each agrees to maintain in confidence all Confidential Information of the other. Except as provided in this Agreement, neither APA nor BLR shall in any manner disclose any Confidential Information of the other to any person, entity, firm or company whatsoever, without the express written consent of the other. APA and BLR shall each take all steps necessary to ensure that their respective partners, subcontractors, affiliates, officers, employees, independent contractors, agents and other representatives (collectively “Representatives”) maintain the Confidential Information in confidence.

11. **Restriction of Boycott of Israel.** In accordance with Arkansas Code § 25-1-503, APA hereby certifies and agrees that it is not currently engaged in, and agrees for the duration of the Agreement not to engage in, a boycott of Israel.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

DRAFT: November 7, 2019

IN WITNESS WHEREOF, APA and BLR have executed this Agreement this 15th day of November, 2019.

**AUGENBLICK, PALAICH AND
ASSOCIATES, INC.:**

Justin Silverstein, Co-CEO

Date

**BUREAU OF LEGISLATIVE
RESEARCH:**

Marty Garrity, Director

Date

DRAFT

ATTACHMENT A

RFP No. BLR-190003

and

APA's Proposal in Response,

including the Official Proposal Price Sheet and 10/02/2019 email

providing supplemental proposal information