

**PUBLIC UTILITY COMMISSION OF TEXAS
REVISED REQUEST FOR QUALIFICATIONS (RFQ) ADDENDUM 2
TO ENGAGE OUTSIDE LEGAL COUNSEL FOR REVIEW, NEGOTIATION, AND
FINALIZATION OF GRANT AND LOAN AGREEMENTS AND OTHER SUPPORTING
DOCUMENTS USED IN THE TEXAS ENERGY FUND APPLICATION AND DUE
DILIGENCE PROCESS**



**Public Utility Commission of Texas
William B. Travis Building
1701 North Congress Avenue
Austin, Texas 78711**

**Closing Time and Date:
August 12, 2024
10:00 am., Central Time**

**Revised RFQ Number: 473-24-00010 Addendum 2
Project Number: 56721**

NIGP Class Item: 918-74, 961-49

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SECTION 1 – INTRODUCTION

Senate Bill (SB) 2627 (88th R.S) created the Texas Energy Fund (Fund) to support the construction, maintenance, modernization, and operation of electric generating facilities. The Fund (i) provides low interest loans to finance upgrades for existing dispatchable generating facilities and the construction of new dispatchable generating facilities within the Electric Reliability Council of Texas (ERCOT) power region; (ii) provides completion bonus grants for the construction of dispatchable electric generating facilities in the ERCOT power region; (iii) awards grants for transmission and distribution infrastructure and electric generation facilities outside of the ERCOT power region; and (iv) establishes the Texas Backup Power Package program. SB 2627 is codified in Chapter 34 of the Public Utility Regulatory Act (PURA) and Texas Health & Safety Code § 382.069. The Fund is overseen by the Public Utility Commission of Texas (PUCT).

SECTION 2 – DEFINITIONS

As used in this RFQ, the following terms have the meanings specified:

- 1) **“Business day”** means a day other than: (i) a Saturday or Sunday; (ii) a national holiday under Texas Government Code § 662.003(a); or (iii) a state holiday under Texas Government Code § 662.003(b).
- 2) **“Contractor”** means the person, organization, business entity, or other entity that is selected for the contract contemplated by this RFQ.
- 3) **“May”** means “is authorized to.”
- 4) **“Proposer”** means “a person, organization, business entity, or other entity that submitted a proposal to this RFQ.”
- 5) **“PUCT”** means “the Public Utility Commission of Texas, an agency of the state of Texas.”
- 6) **“Vendor”** means “a person, organization, business entity, or other entity that has been selected for or entered into a contract with a Texas state agency.”
- 7) **“Vendor Performance Tracking System”** means “the system the Texas Comptroller of Public Accounts is required to provide under Texas Government Code § 2262.055 for evaluating vendor performance.” The Vendor Performance Tracking System is located at: <http://txsmartbuy.com/vpts>

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SECTION 3 – STATEMENT OF WORK

3.A Overview. The PUCT has engaged Deloitte & Touche LLP to develop a loan agreement for applicants seeking to receive a loan from the Fund. The Contractor must (i) review the loan agreement prepared by Deloitte & Touche LLP and other supporting documentation used in the application and due diligence, award, and monitoring process to ensure all statutory and rule requirements are met, that any risk to the Fund is appropriately mitigated, and that the Fund's resources are adequately secured and protected; and (ii) advise the PUCT and make recommendations for any necessary changes, in addition to the tasks specified in Section 3.C of this Statement of Work.

3.B Term. It is the PUCT's expectation that the Contractor will promptly complete all items in this Statement of Work without unreasonable delay. Proposers should include in their response to this solicitation a timeline outlining when each item identified in this Statement of Work can be completed. The term of the contract awarded for this solicitation will be such time that is necessary to complete all items in this Statement of Work, but in no event longer than six (6) years from the date a contract resulting from this solicitation is fully executed.

3.C Duties and Responsibilities. Without limitation, the tasks, duties, and responsibilities of the Contractor will include the following, as directed by the PUCT:

- (1) Review loan and grant agreements prepared by Deloitte & Touche LLP and advise the PUCT if the terms and conditions therein can be appropriately standardized for all applicants seeking loans and grants from the Fund, and if not, advise and assist the PUCT in revising the terms and conditions and negotiating with applicants in order to finalize transactions;
- (2) Review the loan and grant agreements prepared by Deloitte & Touche LLP to ensure they comply with all laws, regulations, and industry standards to adequately protect the interests of the State, and if not, advise and assist the PUCT in correcting any deficiencies;
- (3) Prepare and review documents used in the PUCT's application and due diligence process to ensure all statutory and rule requirements are met;
- (4) Prepare and review documents as are customary and necessary to structure and issue loans and grants;
- (5) Advise the PUCT regarding legal and regulatory risks to the Fund and make recommendations to ensure the Fund's resources are adequately secured and protected;
- (6) Review loan and grant packages for accuracy and completion, identify deficiencies, and make recommendations regarding risk management;
- (7) Assist in drafting documents for loan and grant packages, including correspondence related to default, fraud, or non-compliance;

- (8) Assist in conducting due diligence, including legal due diligence, for loans and grants provided by the Fund;
- (9) Assist in negotiating loan restructure, as applicable;
- (10) Review all agreements and other instruments pursuant to which loans and grants provided by the Fund will be authorized and secured, as applicable, in consultation with the PUCT;
- (11) Advise and provide recommendations to the PUCT concerning the validity and binding nature of any lending agreements associated with the Fund under Texas law and the status and nature of the security for the loans;
- (12) Adhere to timelines set by the PUCT;
- (13) Render advice to individual commissioners and PUCT staff in connection with the issuance of loans and grants from the Fund;
- (14) Provide advice on compliance with lending, finance, corporate, tax, and other applicable law;
- (15) Provide legal support for all matters necessary or incidental to the issuance of loans and grants;
- (16) In response to real or anticipated changes in state or federal law, regulation, or public policy affecting the Fund, advise the PUCT;
- (17) Review legislation when requested by the PUCT and assist with drafting legislation related to the Fund at both the federal and state level; and
- (18) Provide information, advice, opinions, and training, as requested by the PUCT, regarding the Fund on an ongoing basis.

The foregoing services do not include any direct responsibility for litigation of any kind or for proceedings before any administrative agencies. However, if any litigation should develop regarding the issuance of loans or grants from the Fund, Contractor will consult, advise, and cooperate with the PUCT and the Office of the Texas Attorney General, as requested, concerning any such litigation.

3.D Contractor Qualifications

3.D.1. Minimum Contractor Knowledge and Expertise. Proposers must demonstrate knowledge and familiarity with Texas and federal law governing banking, corporate finance, securities regulation, tax liability, financial modeling, project finance, accounting, formation of business entities, corporate governance, secured transactions, contracts, state agency operations, issuance of public securities, transactions involving borrowers and lenders, and capital markets. It is preferred if proposers have prior experience representing borrowers and lenders and working

with government grants and loans. Proposer personnel performing or overseeing the work described in this Statement of Work must have at least ten (10) years of experience practicing law in the subject matter areas described in this paragraph.

3.D.2. Certification. Proposers must demonstrate that personnel assigned to perform or oversee the work described in this Statement of Work are licensed attorneys in good standing to practice law in the State of Texas. Proposers must include a statement in their response identifying all instances of disciplinary history, including the outcome, with a state agency regulating the practice of law in any jurisdiction for any attorney who may perform or oversee work described in this Statement of Work.

3.E. Reporting Requirements. Contractor must advise the PUCT as necessary or requested by the PUCT to accomplish the items in this Statement of Work. The Contractor must advise the PUCT of any routine considerations related to good lending practices, risk management, and securitization not addressed in this Statement of Work and incorporate such recommendations into the Contractor's recommendations where appropriate.

SECTION 4 – ELIGIBILITY AND EVALUATION CRITERIA

4.A. EEO and HUB Statement

The PUCT is an equal employment opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, veteran status, age, or disability in employment or in the provision of services. This commitment extends to proposers, vendors, and their employees as well.

The PUCT encourages Historically Underutilized Businesses (HUBs) to compete for this award.

4.B. Minimum Eligibility Requirements

4.B.1. To pass the initial screening criteria, proposals must demonstrate that all the personnel who will perform or oversee the work, including any subcontractors, have a minimum of ten (10) years of experience in the practice areas specified in Section 3, Statement of Work.

Additionally, proposals must:

- meet all deadlines set out in this RFQ;
- follow the appropriate process for submitting proposals (see Section 6 of this RFQ, Required Components and Format);
- include all required components described in this RFQ (see Section 6);
- meet all format requirements set out in this RFQ (see Section 6); and
- provide documentation for each attorney on the proposal team verifying his/her eligibility to practice law in Texas.

4.B.2. Under Texas law, vendors may be barred from participating in state contracts that are subject to Texas Government Code Chapter 2155, Subchapter B (General Purchasing Requirements, Procedures, and Programs). TEX. GOV'T. CODE § 2155.077. If a proposer is barred from participating in state contracts, its proposal will be disqualified and will receive no further consideration.

4.B.3. The PUCT is required to purchase goods and services that provide the best value to the state. TEX. GOV'T. CODE § 2155.074. To that end, the PUCT will review information in the statewide Vendor Performance Tracking System regarding proposers' past performance. Any of the following conditions may result in a proposer being disqualified from consideration for this RFQ:

- having a score of less than a C in the Vendor Performance Tracking System;
- currently being under a corrective action plan through the Texas Comptroller of Public Accounts;
- having repeated negative Vendor Performance Reports for the same or similar reason; or
- having purchase orders that have been cancelled in the previous 12 months for non-performance (for example, late delivery or failing to meet quality standards).

4.C. Evaluation Criteria

The PUCT will make the selection and award on the basis of the proposer's demonstrated knowledge, competence, and qualifications to provide the services described in Section 3, Statement of Work. A description of the categories under which each proposal will be judged, and the percentage of weight given to each category, are as follows:

- **Proposal Substance – 40%**
 - Proposal demonstrates a clear understanding of the objectives, as described in Section 3 – Statement of Work.
 - Proposed approach is both thorough and practical.
 - Proposed approach for meeting objectives is desirable.
 - Conditions included in the proposal are acceptable.
 - Consideration will be given to executable designs, supported by industry experience.
- **Competence and Knowledge – 40%**
 - Competence and experience are demonstrated by the qualifications described in the proposal.
 - Management structure is well-suited to the objectives described in Section 3 – Statement of Work.
 - Assigned staffing for prime and subcontractors is desirable to meet the objectives described in Section 3 – Statement of Work.
 - The proposer has the capacity and financial resources to perform the contract and meet deadlines without delay or interference.
 - The proposal demonstrates the team's qualifications and experience, drawing on lessons learned and best practices.
 - Assigned staffing for prime and subcontractors is desirable to meet the objectives described in Section 3 – Statement of Work.
- **Proposed Compensation – 20%**

4.D. Texas Vendor Preference

All other factors being equal, preference will be given to a proposer who meets one or more of the following criteria:

- Proposer is incorporated in Texas;
- Proposer's principal place of business is in Texas; or
- Proposer has an established physical presence in Texas.

Proposers who may qualify for the Texas Vendor Preference should provide information establishing the applicable criteria as part of the proposal package.

4.E. References

The PUCT may check references as part of the evaluation process. This is a pass/fail criteria and may be conducted at any time between receipt of a proposal and acceptance or rejection of a proposal. Information gained through reference checks can be used as grounds for disqualification of a proposal if the information casts doubt upon the ability of the proposer to successfully meet the objectives of the RFQ. However, any information obtained through a reference check that is discriminatory on the basis of race, color, religion, sex, national origin, sexual orientation, veteran status, age, or disability will not be considered.

SECTION 5 – SCHEDULE AND PROCESS

5.A. Anticipated Schedule

Disclaimer: Dates are subject to change at the PUCT's discretion. Changes to proposer deadlines will be posted on the Electronic State Business Daily (ESBD) website and the PUCT's Procurement webpage, along with any other RFQ modifications and addenda. It is the proposer's responsibility to periodically check the websites prior to submitting a proposal. A proposer's failure to review additional information posted on the ESBD and PUCT websites will not release the proposer from requirements described in those postings and could result in disqualification of a proposal or additional costs to meet the requirements of the contract should the proposer be selected for the contract.

PUCT Procurement Webpage: <http://www.puc.texas.gov/agency/about/procurement/Default.aspx>

ESBD Website: <https://www.txsmartbuy.com/esbd>

Event

RFQ Release

Last day to submit written questions regarding the RFQ

Deadline for submission of proposals

Post-proposal interviews or presentations, if required

Staff recommendation for selection

Selection approved

Contract period begins

Anticipated Date

June 18, 2024

July 31, 2024, 5 pm CT

August 12, 2024, 10 am CT

August 19-21, 2024

August 23, 2024

September 13, 2024

Upon contract execution

5.B. PUCT Contact Person

Jay Stone, CTCD, CTCM, is the only permitted PUCT point of contact regarding this RFQ. Contact or attempted contact with other PUCT employees, including commissioners and their staffs, may result in a proposer's immediate disqualification. Proposers will be notified if circumstances require a designated substitute contact for this RFQ.

5.C. Process for Asking Questions

The PUCT will only accept written questions and requests for clarification. Requests must be sent by email to RFPCorrespondence@puc.texas.gov, attention: Jay Stone, CTCD, CTCM. Inquiries and comments must reference RFQ No. 473-24-00010.

The PUCT aims to answer all questions within two business days after receipt. Answers to all questions will be provided through an addendum posted on the ESBD and agency procurement websites.

5.D. Process for Submitting Proposals

5.D.1. Proposers must submit their proposals by email to RFPCorrespondence@puc.texas.gov before the stated closing date and time. Proposals will not be considered if received in the RFPCorrespondence@puc.texas.gov email inbox after 10 am Central Time, on August 12, 2024. All required information must be provided at that time. Supplements will only be allowed if information is requested by the PUCT after the closing date of the RFQ.

Jay Stone, CTCD, CTCM, or his designated substitute will file the sealed proposals confidentially in Project Number 56721 with the PUCT's Central Records Division.

5.D.2. Confidential filing is required because this RFQ is conducted using a sealed bid process. Confidential filing does not guarantee confidentiality after the RFQ has ended and a contract has been executed. Any portion of the proposal considered to be confidential after the RFQ has been cancelled or a contract has been awarded (for example, trade secrets) must be marked with the word, "CONFIDENTIAL" in all-caps and bold on each page considered to contain confidential information.

5.D.3. Proposers are advised to seek legal counsel regarding the best way to protect any trade secrets or other proprietary information.

5.D.4. For more information about how the PUCT will respond to PIA requests relating to this RFQ, please see Section 7.C. of this RFQ, Public Information Act Notice.

5.E. PUCT's Standard Process for Selecting Vendors

5.E.1. The PUCT will assemble an evaluation team that will begin proposal evaluation as soon as practicable after the submission deadline. Evaluation team members will score each proposal individually based on the factors of Proposal Substance and Competence and Knowledge, described under Section 4.C. of this RFQ, Evaluation Criteria. Maximum point values will be assigned to each scoring factor according to the percentage of weight given to that factor and

evaluators will assign a point value up to the maximum allowed for each factor. The purchaser will calculate scoring for compensation. The compensation score will be calculated using the following formula:

Compensation Score = (Lowest Price / Price of Response Being Evaluated) multiplied by the Maximum Number of Available Points for Compensation. Evaluation team members will not have access to compensation information while they are reviewing and scoring the proposals.

5.E.2. After individual scoring, the evaluation team will email their scoring sheets to the purchaser. The purchaser will review the individual scoring sheets and compile a summary scoring sheet combining all evaluation team scoring and including the compensation scoring to calculate overall scores.

5.E.3. After overall scores are calculated, the evaluation team, with guidance from the purchaser, will then take one of the following actions: recommend selection of a specific proposer, gather more information before selecting a specific proposer, or recommend that the RFQ be withdrawn or reposted.

5.E.4. If the evaluation team needs more information to make a decision, the PUCT may request any of the following from one or more proposers: additional information or clarification, an interview, an oral presentation, or a best and final offer. Additional information, clarification, interviews, oral presentations or best and final offers will be used to re-score proposals, based on the same criteria used to score the initial proposals, unless different criteria is specified by the purchaser when the additional information is requested.

5.E.5. The PUCT may require selected proposers to participate in conference calls, attend meetings in Austin, Texas, give presentations, or participate in all these activities to provide additional information about their proposals. Any cost associated with any such call, meeting, or presentation will be borne solely by the proposer.

5.E.6. If clarification, presentations, or best and final offers are requested, the evaluation team may request the clarification, presentations, or best and final offers from the top-ranked proposer or proposers only, or all of the proposers, at the discretion of the evaluation team.

5.E.7. Final recommendations will be presented to the Executive Director of the PUCT. The Executive Director may do one of the following: approve the recommended selection in whole or in part, disapprove the recommendation, or defer action on the selection.

5.E.8. The PUCT will begin contract negotiations shortly after the Executive Director approves a recommendation to select a specific proposer. The PUCT may negotiate any portion of any proposal, including: the proposed fee and a final schedule for performance to be incorporated into the contract. However, the terms and conditions contained in the Required Office of Attorney General Outside Counsel Contract found in Attachment A to this RFQ are not negotiable.

5.E.9. The PUCT will notify each proposer of the final action taken upon execution of the contract with the selected proposer.

5.E.10. No questions about the status of the proposals will be answered while proposals are under evaluation.

5.E.11. The PUCT may reject any and all proposals, amend this RFQ, or cancel this RFQ at any time. After the proposal due date, the PUCT will only notify proposers who submitted a proposal prior to the proposal submission deadline of amendments to the RFQ.

SECTION 6 – REQUIRED COMPONENTS AND FORMAT

6.A. Components

Proposals must include all required attachments and certifications. The PUCT will not accept attachments or certifications submitted after the proposal deadline. Proposals that do not include all required information will be considered non-responsive and will be disqualified.

Proposals must include the contents described in 6.A.1 through 6.A.10 with each section clearly defined on a table of contents page.

6.A.1. Statement of the Requirements

In this section, each proposer must succinctly state its understanding of the RFQ's requirements and describe how it would perform the tasks described in Section 3, Statement of Work.

6.A.2. Competence and Knowledge

Each proposer must provide a detailed work plan to demonstrate how it intends to fulfill the requirements identified in Section 3, Statement of Work. The proposal must include an organizational chart identifying functions and reporting relationships of the personnel who will be assigned to this work. The proposer should also describe any prior experience proposer's organization has in providing similar services.

6.A.3. Qualifications

For each person a proposer identifies to perform the work described in this RFQ, the proposer must provide a detailed resume that describes the services they would perform, their qualifications, and their experience.

6.A.4. Compensation

Each proposer must propose pricing to provide the services identified in Section 3, Statement of Work.

Compensation for the services identified in Section 3, Statement of Work must be proposed as a firm fixed price or an hourly rate.

The proposal must include detailed information that establishes the basis for the price or rates proposed. The proposal must differentiate the hourly rates by job classification (eg., associate attorney, junior partner, senior partner).

Unless otherwise approved in writing by the PUCT, payments will be made based upon the invoicing and payment terms of the resulting contract. The PUCT will not reimburse any out-of-pocket expenses or expenses not contemplated at the time of contract execution.

Proposer must demonstrate how elements of the price correspond to elements of the proposed work plan.

6.A.5. References

Each proposer must provide at least three references. Proposers must include a phone number and email address for each reference.

The PUCT prefers references from clients for whom the proposer has performed similar work, including other state commissions or boards.

Proposers must not use the PUCT or any individuals employed by the PUCT as a reference.

6.A.6. Conflicts Statement

Proposers must be neutral and impartial. No entity that has a direct interest in the PUCT's regulation, other than as a consumer of electric, telecommunication, water, or sewer service in the State of Texas, may submit a proposal. Proposers must not have a direct financial interest in the provision of electric, telephone, water, or sewer service in the state of Texas., nor in the lease, sale, installation, or operation of on-site electric generation or battery storage equipment. Additionally, proposers should be aware that the chosen contractor will be disqualified from applying for a loan or grant that is the subject of this RFQ.

Proposers having a conflict of interest, as determined by the PUCT, will not be eligible for contract award. Proposers may also be disqualified if there are facts that would create an appearance of impropriety, even if no actual conflict exists.

The PUCT will determine whether a conflict of interest or an appearance of impropriety exists from the perspective of a reasonable person uninvolved in the matters covered by the resulting contract. The PUCT is the sole arbiter of whether a conflict or an appearance of impropriety exists.

The requirements for the conflicts statement are as follows:

- It must be **signed and notarized** by the highest-ranking officer of proposer's entity having responsibility for vetting corporate conflicts of interest.
- It must identify any personal or business relationships of proposers, including all employees and subcontractors of proposers, with: any electric, telecommunications, water, or sewer utility, or any utility affiliate operating in Texas; any entity having a pending application at the PUCT to enter the Texas retail electric market, telecommunications market, water utility market, or sewer utility market; and any entity likely to have a direct interest in any of the loan or grant programs that are the subject of this RFQ. It must identify the extent, nature, and time aspects of those relationships.
- If a proposer does not have any known or potential conflict of interest or appearance of impropriety, the conflicts statement must include a statement that there is no known or potential conflict of interest or appearance of impropriety. Failure to provide either a statement describing potential conflicts of interest or appearances of impropriety or a

statement that no potential conflict or appearance of impropriety exists will automatically disqualify the proposer.

- The conflicts statement must address how the proposer intends to address any known conflicts of interest or appearance of impropriety.
- The conflicts statement must address how the proposer intends to ensure that no interest may arise as a result of its activities or those of its parent, affiliate, or other related entity that will conflict with the proposer's duty should it be selected to provide the services described in Section 3, Statement of Work.
- The conflicts statement must identify a proposer's lobbyists who are registered or required to register with the Texas Ethics Commission and their compensation. The conflicts statement must also describe any involvement the proposer's lobbyists will have in connection with this engagement or electric utility, telecommunication utility, water utility, or sewer utility legislation or policy.
- The conflicts statement must identify any owner, executive, board member, employee, or subcontractor of proposer who has been employed by the PUCT or another state agency in Texas fewer than four years ago. If any individual is identified under this provision, the conflicts statement must disclose: 1) the former PUCT or state agency employee's name and current position with proposer; 2) the name of the state agency; 3) the nature of the previous employment with the state agency; and 4) the dates the employment ended with the state agency and began with proposer. The PUCT is restricted in its ability to enter into contracts with individuals and entities that employ these individuals under some circumstances. *See* Texas Government Code § 669.003.
- The conflicts statement must certify either that the proposer does not employ an individual who has been employed by the PUCT or another agency of the State of Texas at any time during the two years preceding the submission of the proposal or that it has disclosed in its proposal the following: (i) the nature of the previous employment with the PUCT or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination. The PUCT is restricted in its ability to enter into contracts with individuals and entities that employ certain individuals under some circumstances. *See* Texas Government Code §§ 2254.033 and 2252.901.
- If the circumstances described by a proposer change or additional information is obtained subsequent to the submission of proposals, the proposer must supplement its conflicts statement as soon as reasonably possible upon learning of any change to their statement. If a supplement to the conflicts statement is required after the deadline for submission of proposals, the supplement is exempt from the requirement that all proposal documents must be submitted before the deadline in order for the proposal to be considered.
- The PUCT encourages proposers to provide complete disclosure of any matters that might be considered a conflict of interest or appearance of impropriety. The PUCT may consider

completeness of disclosure in evaluating whether a conflict of interest or an appearance of impropriety exists.

6.A.7. Historically Underutilized Business (HUB) Certification and HUB Subcontracting Plan (HSP)

Any proposer that is HUB certified by the Statewide Procurement Division (SPD) of the Texas Comptroller of Public Accounts or one of its predecessors must submit a copy of its HUB certificate.

Additionally, the PUCT has determined that subcontracting opportunities may be available under this contract. Therefore, all proposers, including State of Texas certified HUBs, must complete and submit a State of Texas HSP with their proposal if the total dollar amount of the proposal response is \$100,000 or more.

Proposers can find HSP forms and instructions on the Texas Comptroller of Public Account's website at: <https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>

Responses that do not include a completed HSP will be rejected as required by Texas Government Code § 2161.252(b).

6.A.8. Certifications

Each proposal must contain a signed statement with the following certifications:

- The proposer has made a good faith effort to ensure all statements and information proposer submitted in response to this RFQ are current, complete, and accurate. The proposer represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a proposal with a false statement or making material misrepresentations during the performance of a contract is a material breach of contract and may void the submitted response and any resulting contract.
- The proposer has not given nor offered to give and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this proposal.
- The proposer is not currently delinquent in the payment of any franchise tax owed to the State of Texas.
- The proposer, the firm, corporation, partnership, institution, or other legal entity represented by the proposer, and anyone acting for such a firm, corporation, partnership, institution, or other legal entity, have not, in connection with this RFQ:
 - Violated the antitrust laws of this state or federal antitrust laws;
 - Communicated directly or indirectly the bid made to any competitor or other person engaged in such line of business; or
 - Otherwise violated 15 U.S.C. §1, *et. seq.*, or Texas Business and Commerce Code § 15.01, *et.seq.*

- Under Texas Government Code § 2155.004, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

A proposer is ineligible to receive a contract award if the proposer is “ a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based.” *See* Texas Government Code § 2155.004(a).

- The proposer is in compliance with Texas Government Code § 669.003, relating to contracting with the current or former executive head of a state agency.
- Under Texas Government Code §§2155.006 and 2261.053, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that any contract may be terminated and payment withheld if this certification is inaccurate.

A proposer is ineligible to receive a contract award if the proposer has violated certain laws or been subject to certain penalties in connection with hurricane relief, recovery, or reconstruction efforts. *See* Texas Government Code §§2155.006 and 2261.053.

- Under Texas Family Code § 231.006, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive payment under the proposed contract and acknowledges that any contract resulting from this proposal may be terminated and payment may be withheld if this certification is inaccurate.

A child support obligor who is more than 30 days delinquent in paying child support, or a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent, is not eligible to receive payments from state funds under a contract to provide property, materials, or services. *See* Texas Family Code § 231.006(a).

- If a proposer includes a Texas address in its proposal, the proposer must certify whether or not it qualifies as a Texas Resident Bidder, as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.
- Proposer represents and warrants that it is not aware of any court or government agency actions, proceedings or investigations pending or threatened against proposer or any of the individuals or entities included in the response within the five calendar years immediately preceding the submission of the proposal that would or could impair respondent’s performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to the PUCT’s consideration of the proposal. If proposer is unable to make the preceding representation and warranty, then proposer instead represents and warrants that it has included as a detailed attachment in its proposal a complete disclosure of any such court or governmental agency actions, proceedings or investigations. In addition, proposer represents and warrants that it will notify the PUCT in writing within

five business days of any changes to the representations or warranties in this clause and understands that failure to timely update the PUCT may result in the proposer's disqualification at the PUCT's sole discretion, or if during the performance of the contract, will constitute a breach of contract and may result in immediate termination of the contract for cause at the PUCT's sole discretion.

- Pursuant to Texas Government Code § 2275.0102, Proposer certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (i) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Texas Government Code § 2275.0103; or (ii) headquartered in any of those countries.

6.A.9. Evidence of Financial Capability

Proposer must provide evidence of financial capability. The preferred evidence of financial capability is an audited financial statement, if proposer has a current audited financial statement available or if it is practicable to obtain one for the proposal. If no audited financial statement is available, proposer must demonstrate its financial capability in whatever manner it deems appropriate. Evidence of financial capability will be considered in evaluating the competence of the proposer.

6.A.10. Other Required Items

- Any proposer incorporated in Texas must include a copy of its current franchise tax Certificate of Good Standing, issued by the Texas Comptroller of Public Accounts and the corporation's charter number, issued by the Texas Secretary of State's Office.
- Each proposer must provide its 9-digit Federal Employer's Identification Number (EIN) or its 5-digit State of Texas Vendor's Identification Number (VIN).
- Each proposer must provide the name and social security number of each of the following, as applicable: an individual or sole proprietor; or each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the proposal.

Proposers may decline to provide social security numbers at the time of submission but will be required to provide the information before the contract is executed.

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of each applicable SSN is required under Texas Family Code §§ 231.006(c) and 231.302(c)(2). The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Texas Family Code § 231.302(e).

6.B. Format Requirements

6.B.1. Information Sheet – The first page of the proposal submission must be an information sheet that clearly states: the name of the proposer, the name address, and telephone number of the

proposer's point of contact, the project number, and the RFQ title and number. The information sheet will be the only portion of the proposal that is not filed under seal. Information sheets must be filed publicly in Project No. 56721.

6.B.2 Copies and Price Information – Proposers must submit four versions of their proposals: one PDF and one Word version with the compensation component, and one PDF and one Word version without the compensation component. The PDF copy with the compensation component must be clearly marked “Original” and include all required signatures and notarized statements.

Price information must be excluded from one PDF and one Word version. This requirement is to allow the evaluation team to review proposals for the evaluation factors of Proposal Substance and Competence and Knowledge only. Each proposal will separately be given a score for pricing and that score will be applied to the scoring matrix to ensure that price does not inadvertently influence the evaluation of the other factors.

The copies of the proposal must be identical to the original except for the omission or redaction of the price information and the Word rather than PDF file format.

6.B.3. Proposers are prohibited from using the Texas State Seal or the PUCT Seal in or on the proposal.

6.B.4. Proposals must not contain any extrinsic items, such as promotional items or other things not contemplated in this Request for Proposals.

6.B.5. Page Limit – Proposals must be limited to 100 pages, including all attachments and certifications, but excluding financial capability submittal or writing sample (if required). The PUCT may reject any proposals longer than 100 pages without review. In any case, evaluation team members will not be provided any pages past the 100th page.

SECTION 7 – CONDITIONS

7.A. Irrevocable Offer

Proposals may be withdrawn in writing before the deadline for receipt of proposals. After the deadline, a proposal becomes an irrevocable offer to provide the services described in Section 3, Statement of Work, with the terms and conditions specified in Attachment A at the price proposed, for the shorter of: a period of 90 days from the RFQ closing date or until a contract resulting from this RFQ is signed. The PUCT will not return withdrawn proposals.

7.B. Proposals are the Property of the PUCT

All proposals and copies of proposals, as well as any best and final offer, and any records provided to the PUCT by the proposer associated with the evaluation of the proposal, will become the property of the PUCT after receipt and will be retained in accordance with the PUCT's records retention schedule.

7.C. Public Information Act Notice

Following the award of a contract, all proposals are public information and subject to release. If the PUCT receives a request for any information submitted to the PUCT in connection with this RFQ, the PUCT will follow the requirements of the Texas Public Information Act (Texas

Government Code Chapter 552). This includes notifying proposers and the Office of the Attorney General if information that the PUCT knows proposer considers to be confidential is requested under the Texas Public Information Act. The PUCT assumes no obligation to assert legal arguments on behalf of a proposer. The PUCT may release portions of proposals and other information provided by a proposer without notifying the proposer if the information is not conspicuously marked “confidential” on each page.

A copy of the contract resulting from this RFQ will be posted on the PUCT’s public website. Information in PUCT contracts is public information unless it is made confidential by law. *See* Texas Government Code § 552.022(a)(3).

7.D. Publicity

Proposers are prohibited from making any public disclosures or news releases pertaining to this RFQ, any resulting contract, or any results or findings based on information provided or obtained to fulfill the requirements of this RFQ or resulting contract. This prohibition may only be waived by prior written approval of the PUCT for the specific disclosure or news release.

7.E. No Proposal Costs Reimbursed

Neither the PUCT nor the State of Texas will reimburse any proposer for any costs related to: preparing a response to this RFQ preparing a best and final offer, providing additional information requested as part of the evaluation of proposals, or making any presentation requested as part of the evaluation of proposals.

7.F. Contract Terms and Conditions

Any contract resulting from this RFQ will use the Required Office of Attorney General Outside Counsel Contract found in Attachment A to this RFQ. No changes to the provisions of the Required Office of Attorney General Outside Counsel Contract may be negotiated. **Proposers must include a certification in their proposals that they agree to abide by all the terms and conditions contained within the Required Office of Attorney General Outside Counsel Contract.**

7.G. Vendor Performance Tracking System

At the end of any contract resulting from this RFQ, the PUCT will input required information into the Vendor Performance Tracking System regarding the contractor’s performance and whether the contractor satisfied the best value standard for this contract. This information is public and other state agencies seeking goods or services are required, under most circumstances, to use the information in the Vendor Performance Tracking System to determine whether or not a particular vendor will meet the best value standard for the purchase of the goods or services.

ATTACHMENT A – Required Office of Attorney General Outside Counsel Contract

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

This Agreement, including all Addenda (incorporated herein by reference), is hereinafter referred to as the “Outside Counsel Contract,” “Contract” or “OCC.” This Outside Counsel Contract is made and entered into by and between the _____ (“Agency”) and _____ (“Outside Counsel”). The term “Parties” as used in this OCC refers to Agency and Outside Counsel and does not include the Office of the Attorney General of Texas (“OAG”). This OCC is made and entered into with reference to the following facts:

INDUCEMENTS

Whereas, Agency requires the assistance of outside legal counsel in carrying out its responsibilities;

Whereas, Agency has received prior approval from the OAG to contract for outside legal services; and

Whereas, Outside Counsel desires to provide legal services to Agency, subject to the authority of the OAG.

AGREEMENT

Now, therefore, in consideration of the inducements, covenants, agreements, and conditions herein contained, the Parties agree as follows:

Section 1. Purpose/OAG Approval.

1.1 Purpose. Outside Counsel shall provide legal services to Agency, as described in Addendum A. Outside Counsel and Agency understand and agree to the OAG’s continuing authority and right to expand or limit the scope of legal services provided by Outside Counsel to Agency.

1.2 OAG Approval. The Texas Attorney General’s, or his Designee’s, signature on this OCC represents the OAG’s approval of Outside Counsel serving as legal counsel to Agency during the term of, and for the purposes expressed in, this OCC. Consistent with Section 402.0212 of the Texas Government Code, the OAG may withdraw, modify, or expand this approval at any time.

1.2.1 Litigation. Outside Counsel shall not represent Agency in any litigation unless Addendum A specifically and unambiguously authorizes litigation in a particular matter. If Addendum A does not specifically authorize Outside Counsel’s representation of Agency in a particular litigation matter and Agency requires such representation, Agency must request and receive OAG approval of a new Outside Counsel Contract for litigation, before filing or responding to litigation matters. If Addendum A specifically authorizes litigation in a particular matter, Outside Counsel has the duty to promptly notify Agency and the OAG of the desirability or likelihood of an appeal.

1.2.2 Appellate Matters. Irrespective of any authorization to engage in litigation in this OCC, or in a writing outside of this OCC, Outside Counsel is not authorized to proceed on any appeal, in any capacity, whether interlocutory or otherwise, whether as appellant, appellee, respondent, applicant, or otherwise, without first obtaining the written permission of the Texas Attorney General, First Assistant Attorney General, or Solicitor General.

1.2.3 Prohibited Subject Matters. Outside Counsel is *only* permitted to represent or advise Agency in “environmental, social, and/or governance” (ESG) type matters or “diversity, equity, and/or inclusion” (DEI) type matters if expressly authorized in Addendum A and only in compliance with state laws as reflected in the written certifications identified in Addendum C.

1.2.4 OAG Review of Outside Counsel Invoice and Release of Payment. In addition to approval from the OAG to contract for legal services, unless the OAG has granted an exemption, Outside Counsel invoices must be reviewed and approved by the OAG pursuant to Subsection 402.0212(b) of the Texas Government Code and Title 1, Chapter 57 of the Texas Administrative Code prior to issuance of any payment by Agency to Outside Counsel.

Section 2. OCC Term.

This OCC shall commence on _____, and shall terminate on _____ (hereinafter “OCC Term”), unless terminated earlier pursuant to Section 7 of this OCC. The OCC Term may not be extended except by amendment pursuant to Section 8.12 of this OCC.

Section 3. Obligations of Outside Counsel.

3.1 Duties. Outside Counsel shall provide the professional legal services to Agency as described in Addendum A. Outside Counsel shall represent Agency and otherwise provide the professional legal services described in Addendum A with due professional care as required by applicable law, regulations, and disciplinary rules.

3.2 Staff. Outside Counsel is expected to perform valuable services for Agency, and the method and amount or rate of compensation are specified in Section 5 and Addendum B of this OCC. Outside Counsel staff and employees are expected to perform work of a type commensurate with their professional titles. Outside Counsel agrees that any person employed or engaged by Outside Counsel and who assists in performing the services agreed to herein shall not be considered employees or agents of Agency or the State of Texas.

3.3 Public Information, Confidentiality and Privilege. Outside Counsel acknowledges that information created or exchanged in the course of representation of a governmental body may be subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, and may be subject to required disclosure in a publicly accessible format pursuant to Section 2252.907 of the Texas Government Code. Outside Counsel will exercise professional judgment and care when creating documents or other media intended to be confidential or privileged attorney-client communications or work product that may be subject to disclosure under the Public Information

Act (e.g., invoices where incidental notation may tend to reveal litigation strategies or privileged information). Outside Counsel shall mark confidential or privileged attorney-client communications or work product as confidential or privileged. This Subsection shall not be interpreted to limit Outside Counsel's duty to provide full disclosure to Agency (and the OAG as applicable) in Outside Counsel's judgment in order to represent Agency with all due professional care and as required by applicable law or disciplinary rules.

3.4 Status. Pursuant to the standard of professional care owed to the Agency, Outside Counsel shall endeavor to keep Agency fully informed about all material matters relating to legal services provided under this OCC.

3.5 Subcontracting Authority. In the event Outside Counsel determines it is necessary or expedient to subcontract for any of the performances herein, or in support of any of those performances, Outside Counsel may enter into such subcontract(s) after obtaining express written approval from Agency. If Outside Counsel purports to enter into a subcontract without express written approval from Agency, the Parties agree that such contract shall be voidable at the option of Agency, and that Outside Counsel shall have no recourse against Agency, the OAG, or the State of Texas for any direct or indirect costs, damages, or other expenses related to the subcontractor. The Parties agree that all such subcontracts entered into by Outside Counsel are subject to Section 4 (Liability), Subsection 5.2 (Reimbursement of Expenses), Subsection 5.3 (Subcontractor Payments), Subsection 6.2 (Subcontractor Invoices), and Subsection 6.5 (Supporting Documents, Right-to-Audit, and Inspection of Records) of this OCC. Furthermore, if Outside Counsel elects to enter into a subcontract for any legal services, then the Parties agree that Agency shall not be liable to Outside Counsel for any rates or rate ranges greater than, or inconsistent with, the highest rate or rate range specified in Addendum B unless prior written approval is obtained from Agency and the OAG. Any subcontracted legal counsel also must comply with Subsections 5.5 (Administrative Staff/Clerks) and 8.8 (Conflict of Interest) of this OCC.

Outside Counsel agrees to comply with all state and federal laws applicable to any subcontractors, including, but not limited to, laws regarding wages, taxes, insurance, historically underutilized businesses, and workers' compensation.

In no event shall this Section or any other provision of this OCC be construed as relieving Outside Counsel of the responsibility for ensuring that all services rendered under this OCC, and any subcontracts thereto, are rendered in compliance with all of the terms of this OCC. Subcontracted legal counsel shall not be third party beneficiaries of this OCC, nor shall they have any right to enforce the terms of this OCC as to Agency.

Section 4. Liability.

4.1 Limitation of Liability. Notwithstanding any other provision of this OCC, and consistent with the principles that Agency does not waive any immunity or impose financial liability on itself beyond that expressly permitted by law, the Parties stipulate and agree that Agency's total liability to Outside Counsel, and for payment of all consideration for the full, satisfactory, and timely performance of all of Outside Counsel's duties, responsibilities, and obligations, including without

limitation, for (i) professional fees, and (ii) reimbursement of any costs and expenses incurred, if any, as set forth in this OCC or any other liability whatsoever arising out of any performance herein shall not exceed:

\$ _____ for this OCC Term.

The Parties further stipulate and agree that any act, action, or representation by either Party, their agents, or their employees that purports to increase the liability of Agency is voidable by the OAG, unless this OCC is amended to modify this limitation of liability. Outside Counsel agrees that the OAG, the State of Texas and its agencies (other than Agency) shall have no liability arising out of this OCC, or in connection with the services of this OCC, to Outside Counsel.

4.2 Subject to Appropriation. The Parties acknowledge and agree that nothing in this OCC will be interpreted to create a future obligation or liability in excess of the funds appropriated to Agency.

Section 5. Compensation/Expenses.

5.1 Fees to Outside Counsel. Subject to the limitation of liability set out in Subsection 4.1 above and consistent with Title 1, Chapter 57 of the Texas Administrative Code, Agency agrees to pay Outside Counsel in consideration of full and satisfactory performance of the legal services under this OCC. Services for non-attorney timekeeper classifications listed on Addendum B, if applicable (e.g., paralegal, legal assistant, or patent agent), must be of a substantive legal nature in order to be paid or reimbursed. Outside Counsel agrees to the fee schedule as described in Addendum B.

5.1.1 Travel Billing Rate. As described in Addendum B, Agency will pay as a travel rate an amount not to exceed one-half (1/2) of an attorney's or paralegal's reasonable hourly rate under this OCC. In no event shall a travel rate exceed one-half (1/2) of the maximum hourly rate that is applicable to the attorney or paralegal.

5.2 Reimbursement of Expenses. Subject to the limitation of liability set out in Subsection 4.1 above, Agency will reimburse Outside Counsel for actual expenses incurred in the performance of the legal services described in Addendum A, if such expenses are reasonable and either necessary or advisable. Outside Counsel must provide copies of original receipts as evidence of actual expenditures. Limitations on the amount and type of reimbursement include the following, unless otherwise agreed upon by Agency in writing, in advance, and in accordance with Agency policy and relevant law:

5.2.1 Mileage. Agency will reimburse Outside Counsel for reasonable and necessary travel mileage at the per mile rate posted on the Texas Mileage Guide published online by the Texas Comptroller of Public Accounts pursuant to Section 660.043 of the Texas Government Code.

5.2.2 Meals. Agency will reimburse Outside Counsel for reasonable and necessary meal expenses at the rate of \$ _____ or actual expenses, whichever is less, for each timekeeper

as listed in Addendum B for each day requiring overnight travel and on the return day of travel. Agency will not reimburse Outside Counsel for the purchase of alcohol.

5.2.3 Lodging. Agency will reimburse Outside Counsel for reasonable and necessary lodging expenses. Texas lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$200.00 per timekeeper, as listed in Addendum B, per night. Out-of-Texas lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$250.00 per timekeeper, as listed in Addendum B, per night.

5.2.4 Airfare. Airfare will be reimbursed at the lesser amount of the actual expense or the regular published rates for airfares for commercial airlines. Agency will not reimburse Outside Counsel for expenses relating to first- or business-class airfare or any other expense related to premium or preferred airfare benefits.

5.2.5 Expert Services. Subject to Agency's prior approval, Agency will reimburse Outside Counsel for the reasonable and necessary cost of expert services.

5.2.6 Other Reimbursable Expenses. Agency will reimburse the actual cost for other expenses if Outside Counsel provides a reasonable and sufficient explanation of the nature and purpose of the charge and the charge is reasonable and either necessary or advisable.

5.2.7 Non-Reimbursable Expenses. Agency expects Outside Counsel to anticipate and include routine operating expenses and disbursements as part of overhead and, therefore, part of a basic hourly rate or flat rate. Accordingly, Agency will not reimburse Outside Counsel for any such routine operating expenses or disbursements, including but not limited to the following: routine copying and printing charges; fax charges; routine postage; office supplies; telephone charges unless related to teleconferencing services; local travel (within 20-mile radius of office including mileage, parking, and tolls) not relating to overnight travel; all delivery services performed by internal staff; electricity or other utilities; software costs or subscription fees; and internet or wireless access charges.

5.2.8 Gratuity. Agency will not reimburse Outside Counsel for tips or gratuities.

5.2.9 Reimbursement for Agency Employee Expenses. Agency will not reimburse Outside Counsel for the cost of expenses incurred by Agency employees.

5.2.10 No Mark-up. Outside Counsel may only be reimbursed for actual expenses. Outside Counsel shall not be reimbursed for any mark-up or other overhead costs.

5.3 Subcontractor Payments. Subject to the limitation of liability set out in Subsection 4.1 above and Agency's prior approval, Agency will reimburse Outside Counsel for the actual, reasonable and necessary expenses relating to Outside Counsel's use of subcontractors. Outside Counsel shall be responsible for any payments and other claims due to subcontractors for work performed under this OCC. Outside Counsel, in subcontracting for any performances or in support of any of the performances specified herein (e.g., expert services, local counsel, and other

services), expressly understands and agrees that Agency shall not be directly liable in any manner to Outside Counsel's subcontractor(s).

5.4 Legal Research. Agency will only reimburse Outside Counsel for its reasonable and necessary expenses relating to legal research.

5.5 Administrative Staff/Clerks. Agency will only pay for substantive legal work performed by attorneys or other qualified personnel, regardless of the job title or classification applicable to such individual. For purposes of this Contract, "substantive legal work" has the same meaning as defined by the Texas Paralegal Standards adopted by the Board of Directors of the State Bar of Texas. Agency will not pay for law clerks or interns, however classified, under any circumstances. Agency will not pay for administrative staff, such as secretarial support, librarians, case clerks, and accounting and billing clerks, for activities including but not limited to the following: overtime, file opening, file organization, docketing, and other administrative tasks; and preparation of billing, invoice review, budget preparation, and communications regarding same or any other accounting matter. The OAG will not approve payment of any invoice if OAG determines, in its sole discretion, that the invoice includes a request for payment for services or expenses incurred that are administrative, clerical, or any other form of service other than substantive legal work.

5.6 Training. Agency will not pay for the education or training of attorneys, paralegals, or other staff of Outside Counsel, including assigning such staff on a transient basis to an Agency matter.

Section 6. Invoices for Payment.

6.1 General. Agency and Outside Counsel agree to abide by the administrative rules adopted by the OAG governing the submission, review, and approval of invoices found at Title 1, Chapter 57 of the Texas Administrative Code. Agency and Outside Counsel understand and agree that no invoice shall seek reimbursement for services performed or expenses incurred in violation of the provisions of this OCC. Agency and Outside Counsel further understand and agree that the OAG will not approve payment of any invoice if the OAG determines, in its sole discretion, that the invoice includes a request for payment for services that are prohibited by this OCC.

6.1.1 Billing Period. The billing period is the interval (e.g., monthly) which determines the frequency Outside Counsel will submit invoices to the Agency. The billing period for this OCC is specified in Addendum B. Unless otherwise specified in Addendum B of the Contract, a billing period defined as "monthly" shall begin with the first day of the calendar month and end with the last day of the calendar month.

6.1.2 Billable Time. Agency will only pay for the services of individuals and timekeeper classifications identified in Addendum B. All time must be billed in one-tenth hour or one-quarter hour increments and must reflect only actual time spent. Tasks referencing correspondence and filings must describe the document received or authored. Agency expects to be billed for the actual time it takes to modify standardized forms, filings, and/or correspondence for use on the matter being billed. Agency will not reimburse Outside Counsel for the time it originally took to prepare any such standardized documents. Agency will not pay for review, execution, and processing of the OCC and submission of invoices.

6.1.3 Submission of Invoices by Outside Counsel. Outside Counsel must submit invoices to Agency for review within one calendar month from the end of the relevant billing period covered by the invoice. Outside Counsel must submit invoices to Agency at:

6.1.4 Attorney General Review of Invoices. Agency shall submit invoices received from Outside Counsel to the OAG for review and approval, in accordance with Texas Government Code Section 402.0212(b). Agency must submit invoices and other related information to the OAG in the manner identified by the OAG on its website:

<https://www.texasattorneygeneral.gov/divisions/general-counsel/outside-counsel-contracts>

If Agency fails to comply with the requirements of Section 402.0212 of the Texas Government Code in its submission of invoices to the OAG for review, such invoices may not receive approval from the OAG.

Any invoices submitted directly to the OAG by Outside Counsel will not be reviewed. Outside Counsel must submit its invoices directly to Agency, in accordance with Subsection 6.1.3 of this OCC.

6.2 Subcontractor Invoices. Subcontractor(s) shall directly invoice Outside Counsel, and Outside Counsel shall then invoice Agency for the work performed. The actual work performed by subcontractor shall be specifically identified in the invoice supported by attached documentation.

6.3 Prompt Payment. Payments to Outside Counsel by Agency under this OCC shall be in compliance with Chapters 402 and 2251 of the Texas Government Code and Title 34, Chapter 20, Subchapter F of the Texas Administrative Code.

6.4 Administrative Fee. Outside Counsel agrees that, pursuant to Subsection 402.0212(c) of the Texas Government Code and Title 1, Chapter 57 of the Texas Administrative Code, a non-refundable administrative fee is due to the OAG for the review of Outside Counsel invoices. This fee is due within 30 days of the OAG's approval of this OCC and for each biennium thereafter for the duration of the OCC Term. In the event that Outside Counsel fails to timely submit to the OAG the required administrative fee, any invoices shall be deemed incorrect and incomplete and not eligible for payment. Outside Counsel may not charge, or seek reimbursement from, the Agency for the payment of the administrative fee.

Checks or money orders must be made payable to the "Office of the Attorney General" and reference the identifying OCC number assigned by the OAG. Outside Counsel must submit the administrative fee to the following address:

Outside Counsel Invoice
Office of the Attorney General
P.O. Box 13175
Austin, TX 78711-3175

6.5 Supporting Documents, Right-to-Audit, and Inspection of Records.

6.5.1 Duty to Maintain Records. Outside Counsel shall maintain adequate records to support its charges, procedures, and performances to Agency for all work related to this OCC. Outside Counsel shall also maintain such records as are deemed necessary by Agency, the OAG, the State Auditor's Office, or federal auditors if federal funds are used to pay Outside Counsel, to ensure proper accounting for all costs and performances related to this OCC.

6.5.2 Records Retention. Outside Counsel shall retain, for a period of at least seven (7) years after the later of (i) the expiration or termination of this OCC or (ii) the resolution of all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving this OCC, such records as are necessary to fully disclose the extent of services provided under this OCC, including but not limited to any daily activity reports, time distribution and attendance records, and other records that may show the basis of the charges made or performances delivered.

6.5.3 Inspection of Records and Right to Audit. Outside Counsel shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to Agency or the State of Texas' property, services performed, and charges, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this OCC, for purposes of inspecting, monitoring, auditing, or evaluating by Agency, the State of Texas, or their authorized representatives. Outside Counsel shall cooperate with auditors and other authorized Agency and State of Texas representatives and shall provide them with prompt access to all of such property as requested by Agency or the State of Texas.

6.5.4 State Auditor. In addition to and without limitation on the other audit provisions of this OCC, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of Outside Counsel or any other entity or person receiving funds from the State of Texas directly under this OCC or indirectly through a subcontract under this OCC. The acceptance of funds by Outside Counsel or any other entity or person directly under this OCC, or indirectly through a subcontract under this OCC, acts as acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, Outside Counsel or any other entity or person that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. Outside Counsel further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Outside Counsel shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Outside Counsel, and the requirement to cooperate, is included in any subcontract it awards. The State Auditor's Office shall at any time have access to and the right to examine, audit,

excerpt, and transcribe any pertinent books, documents, working papers, and records of Outside Counsel related to this OCC.

Section 7. Termination

7.1 Convenience of the State. Agency has the right to terminate this OCC, in whole or in part, without penalty, by notifying Outside Counsel in writing of such termination prior to the effective date of such termination. Such notification of termination shall state the effective date of termination. In the event of such termination, Outside Counsel shall, unless otherwise mutually agreed upon in writing, cease all services immediately, except such services that are necessary to wind-up, in a cost-effective manner, all services being provided. Subject to Section 4 of this OCC, Agency shall be liable for payments for all services performed under this OCC up to the effective date of termination, plus any necessary services to cost effectively wind-up.

In the event the OAG withdraws its approval of this OCC during the OCC term, then Agency, in consultation with the OAG, shall terminate this OCC for convenience.

7.2 Cause/Default. In the event that Outside Counsel commits a material breach of this OCC, Agency may, upon written notice to Outside Counsel, immediately terminate all or any part of this OCC. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law, or under this OCC.

7.3 Rights Upon Termination or Expiration. Upon expiration or termination of this OCC for any reason, Outside Counsel shall, subject to Outside Counsel's professional obligations, immediately transfer to Agency all information and associated work products prepared by Outside Counsel or otherwise prepared for Agency pursuant to this OCC, in whatever form such information and work products may exist, to the extent requested by Agency. At no additional cost to Agency and in any manner Agency deems appropriate in its sole discretion, Agency is granted the unrestricted right to use, copy, modify, prepare derivative works from, publish, and distribute any component of the information, work product, or other deliverable made pursuant to this OCC.

7.4 Remedies and No Implied Waiver. Notwithstanding any exercise by Agency of its rights of early termination, Outside Counsel shall not be relieved of any liability to Agency for damages due to Agency by virtue of any breach of this OCC by Outside Counsel or for amounts otherwise due Agency by Outside Counsel. Additionally, any failure by Agency to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities detailed in this OCC or otherwise available to Agency by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

7.5 Termination by Outside Counsel. Consistent with applicable rules of professional conduct, Outside Counsel may terminate this OCC upon reasonable notice for (i) material breach by Agency; or (ii) if such applicable rules of professional conduct require such withdrawal.

Section 8. General Terms and Conditions.

8.1 Independent Contractor. Outside Counsel agrees and acknowledges that during the OCC Term, Outside Counsel and Outside Counsel's subcontractors are independent contractors of Agency or the State of Texas and are not employees of Agency or the State of Texas.

8.1.1 Responsibility for Acts and Omissions. Outside Counsel will be solely and entirely responsible for its acts and omissions and the acts and omissions of its agents, employees, subcontractors, and representatives in the performance of this OCC.

8.1.2 Responsibility for Employee Costs. Outside Counsel agrees and acknowledges that during the OCC Term, Outside Counsel shall be entirely responsible for the liability and payment for Outside Counsel or Outside Counsel's employees or assistants, of all taxes of whatever kind, arising out of the performance of this OCC. Other than the payments described in this OCC, Outside Counsel agrees and acknowledges that Outside Counsel or Outside Counsel's employees or assistants shall not be entitled to any State benefit on account of the services provided hereunder. Agency shall not be liable to Outside Counsel, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and workers' compensation, or any benefit due to a state employee. If Agency or the State of Texas shall nonetheless become liable for such payments or obligations, Outside Counsel shall promptly pay or reimburse Agency or the State of Texas for such liability or obligation.

8.2 Assignment of OCC. Outside Counsel may not assign this OCC, or assign any right or delegate any duty under this OCC, and any attempted assignment in violation of this provision is void and without effect.

8.3 Survival. The obligations of Outside Counsel under the following Sections and Subsections shall survive the termination or expiration of this OCC: 3.3, 4, 5, 6.5, 7.1, 7.3, 7.4, 8.3, 8.7, 8.11, 8.13, and Addendum C, Section 8.

8.4 Copyright/Intellectual Property. Outside Counsel shall take reasonable measures to protect Agency from material risks of Agency liability known to, or reasonably anticipated by, Outside Counsel for any copyright or patent infringement or disclosure of trade secrets resulting from the use of any equipment, materials, information, or ideas furnished by Outside Counsel pursuant to this OCC (other than equipment, materials, information, or ideas supplied or required by Agency or its employees or other agents). Outside Counsel and Agency agree to furnish timely written notice to each other, and to the OAG, of any claim of copyright, patent, trade secret, or other intellectual property infringement arising out of services under this OCC.

8.5 Media Releases or Pronouncements. Outside Counsel understands that the OAG and Agency do not endorse any vendor, commodity, or service. Outside Counsel, its employees, representatives, agents, or subcontractors may not participate in any media event or news interview, or issue any media release, advertisement, social media post, publication, editorial, article, or public pronouncement that pertains to this OCC or the services or project to which this OCC relates, or that mentions the OAG or Agency, without the prior written approval of the OAG and Agency.

8.6 Written Notice Delivery. Any notice required or permitted to be given under this OCC by one Party to the other Party shall be in writing. Such notice shall be, (i) deemed to have been given immediately if delivered in person to the recipient's address set forth in this Subsection; (ii) two business days from the date shown it was sent by express or priority commercial package delivery service; or (iii) if sent through the United States Postal Service (postage prepaid) by registered or certified mail with return receipt requested on the date of the USPS certificate of receipt.

8.6.1 Outside Counsel's Address. The address for Outside Counsel for all purposes under this OCC and for all notices hereunder shall be:

8.6.2 OAG's and Agency's Addresses. The addresses for the OAG and Agency for all purposes under this OCC, except as provided by Subsection 6.0.1 and for all notices hereunder shall be:

Agency Address

OAG Address

Outside Counsel Contract Coordinator
Office of the Attorney General
General Counsel Division (MC 074-1)
Post Office Box 12548
Austin, Texas 78711-2548

8.7 Dispute Resolution. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by Agency and by Outside Counsel to attempt to resolve any claim for breach of this OCC made by Outside Counsel.

Outside Counsel's claims for breach of this OCC, that the Parties cannot resolve in the ordinary course of business, shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Texas Government Code. To initiate the process, Outside Counsel shall submit written notice, as required by Subchapter B, to the Agency's contact with a copy to the First Assistant Attorney General or designee. Said notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Outside Counsel and Agency otherwise entitled to notice under this OCC. Compliance by Outside Counsel with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.

8.8 Conflict of Interest.

8.8.1 Payment Limitations. Neither local funds nor funds appropriated by the General Appropriations Act may be expended to pay the legal fees or expenses of Outside Counsel in

representing Agency in any matter if Outside Counsel is representing a plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies. For these purposes, “proceedings seeking monetary damages” do not include actions for tax refunds, compensation for exercise of eminent domain authority, or reimbursement of costs of litigation and attorney’s fees.

In addition to the ongoing conflict of interest requirements included in Subsection 8.8.2 below, neither local funds nor funds appropriated by the General Appropriations Act may be used to pay the legal fees or expenses of Outside Counsel under this OCC if Outside Counsel currently represents, has represented in the six months preceding this OCC, or will represent in the six months following the termination of this OCC, a client before Agency.

8.8.2 Ongoing Disclosure Obligations. Outside Counsel shall regularly conduct conflicts analyses on its interests and those of its clients and any subcontractor and immediately disclose, in writing, to Agency and the OAG any actual or potential conflict with respect to Agency, OAG, or the State of Texas.

Outside Counsel has a continual and ongoing obligation to immediately notify the OAG and Agency, in writing, upon discovery of any actual or potential conflict to Agency, the OAG, or the State of Texas.

8.9 Taxes. This OCC shall not be construed so as to supersede the laws of the United States or the State of Texas that accord the State of Texas, Agency, and all departments, agencies, and instrumentalities of the State of Texas exemptions from the payment(s) of all taxes of whatever kind. To the extent allowed by law, Agency will provide, upon the request of Outside Counsel during this OCC Term, all applicable tax exemption documentation.

8.10 Signatories. Having agreed to the terms herein, the undersigned signatories hereby represent and warrant that they have authority to enter into this OCC and are acting in their official capacities.

8.11 Applicable Law; No Waiver of Immunity; Exclusive Jurisdiction and Venue. This OCC is made and entered into in the State of Texas, and this OCC and all disputes arising out of or relating to this OCC shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

Outside Counsel agrees that Agency and the State of Texas do not waive any immunity (including, without limitation, state or federal sovereign immunity). Outside Counsel further agrees that any properly allowed litigation arising out of or in any way relating to this OCC shall be commenced exclusively in a court of competent jurisdiction in Travis County, Texas. Outside Counsel thus hereby irrevocably and unconditionally consents to the exclusive jurisdiction of a court of competent jurisdiction in Travis County, Texas for the purpose of prosecuting or defending such litigation. Outside Counsel hereby waives and agrees not to assert: (i) that Outside Counsel is not personally subject to the jurisdiction of a court of competent jurisdiction in Travis County, Texas, (ii) that the suit, action or proceeding is brought in an inconvenient forum, (iii) that the venue of the suit, action or proceeding is improper, or (iv) any other challenge to jurisdiction or venue.

8.12 Amendments. This OCC, including addenda hereto, may be amended only upon written agreement signed by the Parties and approved by the OAG.

8.13 Severability/Interpretation. The fact that a particular provision in this OCC is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions, and this OCC will continue to be binding on both Parties. Any provision that is held to be void or unenforceable will be interpreted by the Parties or the courts to be replaced with language that is as close as possible to the intent of the original provision so as to effectuate the purpose of this OCC. Any ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of this OCC.

8.14 Insurance Required. Outside Counsel certifies that it presently maintains malpractice insurance in an amount not less than Agency's limitation of liability under Section 4.1 of this OCC.

Outside Counsel agrees to maintain at least this amount of insurance coverage during this OCC Term. Further, Outside Counsel agrees to give notice to Agency and to the OAG in the event any amount of malpractice insurance is canceled. Outside Counsel also agrees to furnish to Agency or the OAG certified copies of such insurance policies when requested. Outside Counsel agrees that no claim by Agency and the State of Texas for damages resulting from breach of Outside Counsel's duties to Agency under this OCC shall be limited to the amount of malpractice insurance maintained by Outside Counsel.

8.15 Additional Terms and Order of Precedence. Any additional terms agreed to by Outside Counsel and Agency shall be electronically appended to this Contract and must be approved by the OAG. These terms shall not be inconsistent with or contrary to the Contract terms listed in Sections 1-8 and Addendum C of this OCC, and nothing in any additional terms or conditions shall remove or modify terms contained in Sections 1-8 and Addendum C. In the event of any conflict, ambiguity or inconsistency between any additional terms and conditions appended electronically hereto and Sections 1-8 and Addendum C of this Outside Counsel Contract, Sections 1-8 and Addendum C shall take precedence and control.

DRAFT ONLY

SIGNATURES FOLLOW

IN WITNESS THEREOF, THE PARTIES HAVE SIGNED AND EXECUTED THIS OCC.

Tax ID#

Approved:

By the Office of the Attorney General of Texas

Texas Attorney General or Designee

DRAFT ONLY

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

Addendum A

Scope of Services

DRAFT ONLY

OUTSIDE COUNSEL CONTRACT
OAG Contract No. _____

Addendum B

Rates

Name(s) of Lead Counsel:

Default Classification. In an invoice submitted for review to the OAG, if an Attorney, Paralegal, or Legal Assistant timekeeper is listed in the invoice, but not expressly referenced in this Addendum B, then that timekeeper may be billed at either the lowest applicable rate for an Attorney, Paralegal, or Legal Assistant listed in this Addendum B, or the hourly rate listed in the invoice, whichever is lower.

Billing Period. The billing period for this OCC shall be:

Travel Rate. An attorney's travel rate may not exceed one-half of that attorney's hourly rate listed above. If no hourly rate is identified above or no travel rate(s) listed below, Outside Counsel may not charge Agency for time spent traveling on Agency matters.

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

Addendum C

Certifications and Warranties

By agreeing to and signing below, Outside Counsel hereby makes the following certifications and warranties:

- 1. Delinquent Child Support Obligations.** Outside Counsel certifies that it is not ineligible to receive any grant, loan, or payment under this OCC pursuant to Section 251.006 of the Texas Family Code and acknowledges that this OCC may be terminated and payment may be withheld if this certification is inaccurate.
- 2. Buy Texas.** With respect to any services purchased pursuant to this OCC, and pursuant to Section 21055.4441 of the Texas Government Code, Outside Counsel represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials. This Subsection does not apply to Outside Counsel providing legal services located outside the State of Texas.
- 3. Gift to Public Servant.** Outside Counsel warrants that it has not given, nor does it intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this OCC.
- 4. Franchise Tax.** Outside Counsel certifies that its Texas franchise tax payments are current, or that it is exempt from or not subject to such tax, consistent with Chapter 171 of the Texas Tax Code.
- 5. Outside Counsel License/Conduct.** Outside Counsel certifies that each attorney performing services under this OCC is an attorney in good standing under the laws of the State of Texas or the jurisdiction from which the attorney's representation primarily occurs. Outside Counsel will notify Agency in writing within one business day of any lapse in an assigned attorney's licensed status or any final disciplinary action taken against an assigned attorney. For the Lead Counsel(s) named in Addendum B, Outside Counsel will provide documentation of good standing from the state bar or the licensing authority of the jurisdiction in which the attorney resides and is licensed.
- 6. Debt to State.** Outside Counsel acknowledges and agrees that, to the extent Outside Counsel owes any debt (child support or other obligation) or delinquent taxes to the State of Texas, any payments Outside Counsel may be owed under this OCC may be applied by the Comptroller of Public Accounts toward any such debt or delinquent taxes until such debt or delinquent taxes are paid in full.

7. Prohibited Bids and Contracts. Under Section 2155.004 of the Texas Government Code, Outside Counsel certifies that it is not ineligible to receive this OCC and acknowledges that this OCC may be terminated and payment withheld if this certification is inaccurate.

8. Compliance with State Law Contracting Provisions. Agency and Outside Counsel certify that this OCC is compliant, and will remain compliant, with any and all applicable laws governing contracts involving the State of Texas or its agencies, including, but not limited to, Sections 572.054 (Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense); 572.069 (Certain Employment for Former State Officer or Employee Restricted); 2252.901 (Contracts with Former or Retired Agency Employees); 2252.908 (Disclosure of Interested Parties); and 2261.252 (Disclosure of Potential Conflicts of Interest; Certain Contracts Prohibited) of the Texas Government Code.

9. Does not Boycott Israel. To the extent required by Section 2271.002 of the Texas Government Code, Outside Counsel certifies, by executing this OCC, that Outside Counsel either (i) meets an exemption criteria under Section 2271.002; or (ii) does not, and will not during the term of this OCC, boycott Israel. Outside Counsel further certifies that no subcontractor of Outside Counsel boycotts Israel or will boycott Israel during the term of this Contract. Outside Counsel agrees to take all necessary steps to ensure this certification remains true during the term of this OCC.

10. Foreign Terrorist Organizations. Outside Counsel certifies that neither Outside Counsel, nor any subcontractor of Outside Counsel, is a company under Section 2252.152 of the Texas Government Code with which Agency may be prohibited from contracting. Outside Counsel agrees to take all necessary steps to ensure this certification remains true during the term of this OCC.

11. Limitation on Abortion Funding. Outside Counsel acknowledges and agrees that, under article IX, Section 6.24 of the General Appropriations Act, 88th Leg., R.S. (2023), and except as provided by that Act, funds may not be distributed under this OCC to any individual or entity that: (1) performs an abortion procedure that is not reimbursable under the State of Texas' Medicaid program; (2) is jointly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the State of Texas' Medicaid program; or (3) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the State of Texas' Medicaid program.

12. Contracting Information Responsibilities. Outside Counsel represents and warrants that, to the extent applicable, it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this OCC and Outside Counsel agrees that the OCC can be terminated if Outside Counsel knowingly or intentionally fails to comply with a requirement of that subchapter.

13. Excluded Parties. Outside Counsel certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions

with Persons Who Commit, Threaten to Commit, or Support Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control.

14. Executive Head of State Agency Affirmation. Under Section 669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency, Outside Counsel represents that no person who served as an executive of Agency, in the past four (4) years, was involved with or has any interest in this OCC. If Outside Counsel employs, employed, or has used the services of a former executive of Agency, then Outside Counsel certifies that it has previously provided to Agency the following information: name of the former executive, the date of separation from the Agency, the position held with Outside Counsel, and the date(s) of employment with Outside Counsel.

15. No Conflicts of Interest. In addition to the conflict of interest requirements of Section 8.8 above, Outside Counsel represents and warrants that the provision of services or other performance under this Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety under applicable Texas law.

16. Prior Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Outside Counsel certifies that the individual or business entity named in this OCC is not ineligible to be awarded this OCC and acknowledges that this OCC may be terminated and payment withheld if this certification is inaccurate.

17. Does not Discriminate Against Firearm and Ammunition Industries. Outside Counsel verifies that: (1) it does not, and will not for the duration of this OCC, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association. If circumstances relevant to this provision change during the course of this OCC, Outside Counsel shall promptly notify the Agency and the OAG.

18. Does not Discriminate Against Energy Companies. Outside Counsel verifies that: (1) it does not, and will not for the duration of the OCC, boycott energy companies. If circumstances relevant to this provision change during the course of this OCC, Outside Counsel shall promptly notify the Agency and the OAG.

19. COVID-19 Documentation. Pursuant to Texas Health and Safety Code Section 161.0085(c), a business in Texas may not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business. Outside Counsel represents and warrants that it is in compliance with Texas Health and Safety Code, Section 161.0085 and is eligible, pursuant to that Section, to enter into a contract payable with state funds.

20. Critical Infrastructure Affirmation. To the extent applicable and pursuant to Texas Government Code Section 2274.0102, Outside Counsel certifies that neither it nor its parent company, nor any affiliate of Outside Counsel or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of a China, Iran, North Korea, Russia, or any other designated country, or (2) headquartered in China, Iran, North Korea, Russia, or any other designated country.

21. Human Trafficking Prohibition. Under Section 2155.0061 of the Texas Government Code, Outside Counsel certifies that the business entity named in this Contract is not ineligible to receive this OCC and acknowledges that this OCC may be terminated and payment withheld if this certification is inaccurate.

22. E-Verify Program. Outside Counsel certifies that it shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this OCC to determine the eligibility of: (i) all persons employed by Outside Counsel to perform duties within Texas; and (ii) all persons, including subcontractors, assigned by Outside Counsel to perform work pursuant this OCC within the United States of America.

23. Data Management & Security Controls. In accordance with Section 2054.138 of the Texas Government Code, Outside Counsel certifies that it will comply with any security controls required under this OCC and will maintain records and make them available to the Agency and the OAG as evidence of Outside Counsel's compliance with those required controls.

24. Disaster Recovery Plan. Upon request of the Agency or the OAG, Outside Counsel shall provide the Agency or the OAG with descriptions of its business continuity and disaster recovery plans.

25. Suspension and Debarment. Outside Counsel certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in this OCC by any state or federal agency (as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts, and the System for Award Management (SAM) maintained by the General Services Administration) and acknowledges that this OCC may be terminated and payment withheld if this certification is inaccurate or does not remain true during the term of this OCC.

26. Does not engage in Invidious Discrimination; No Quotas. Outside Counsel certifies that it does not, and will not for the duration of this OCC, invidiously or illegally discriminate on the basis of race, sex, or religious belief. Outside Counsel further certifies it will not institute any quota system based on race or sex as a basis for assigning work or making staffing decisions, whether such assignments or staffing decisions are related to this OCC and notwithstanding that such assignments or staffing decisions may be made at the request of another client.

27. False Statements. Outside Counsel represents and warrants that all statements and information in this OCC, and provided in connection with this OCC, are current, complete, true, and accurate. False statements or material misrepresentations during the performance of this OCC is a material breach of this OCC and may void this Contract.

SIGNATURE FOLLOWS

OUTSIDE COUNSEL

By:

Title:

Date

DRAFT ONLY