



STEPHEN F. AUSTIN STATE UNIVERSITY

NACOGDOCHES, TEXAS

PROCUREMENT AND PROPERTY SERVICES

P. O. Box 13030

NACOGDOCHES, TX 75962

REQUEST FOR QUALIFICATIONS

RFQ NUMBER

LEGAL-2016

RESPONSES MUST BE RECEIVED BEFORE:

5:00PM, WEDNESDAY, JUNE 22, 2016

MAIL RESPONSES TO:

Stephen F. Austin State University
Procurement and Property Services
P. O. Box 13030, SFA Station
Nacogdoches, TX 75962-3030

**HAND DELIVER AND/OR
EXPRESS MAIL TO:**

Stephen F. Austin State University
Procurement and Property Services
2124 Wilson Drive
Nacogdoches, TX 75962

Show RFQ Number, Due Date and Time on Return Envelope

NOTE: Response must be time stamped at **Stephen F. Austin State University Procurement and Property Services** before the hour and date specified for receipt of response.

REFER INQUIRIES TO:

Kay Johnson
Stephen F. Austin State University
Procurement and Property Services
936.468.4037
email: johnsondk6@sfasu.edu

**STEPHEN F. AUSTIN STATE UNIVERSITY
Request for Qualifications #LEGAL-2016**

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SECTION 1 INTRODUCTION

1.1 SCOPE OF REQUEST

Stephen F. Austin State University, hereafter referred to as “SFA” or “the University”, is seeking responses from law firms and attorneys interested in providing outside counsel services in the area(s) of: Intellectual Property, Immigration, Public Finance and Bond Issuance; Financial Law; Real Estate, Tax, Federal Communications Commission (FCC) law, Wills, Trusts and Estates, Health Law, and Oil and Gas, Mineral Interest, and/or Utilities Matters.

1.2 TERM

This RFQ and the selected responses thereto will establish a “Pre-Approved List” of law firms or attorneys practicing in each of the areas of law identified in Section 2, Statement of Work, so that the Stephen F. Austin State University Office of the General Counsel, on behalf of the University, may contract with those law firms or attorneys as appropriate to serve as counsel representing the University on specific matters as the need arises during the timeframe from notice of selection through August 31, 2017.

1.3 RESPONDENT QUALIFICATIONS

Firms selected from this RFQ will be required to maintain an office staffed with personnel who are responsible for providing legal services to the University. Attorneys representing the University in matters of Texas law must be licensed by the State Bar of Texas.

1.4 SFA INFORMATION

SFA is an institution of higher education operated as an agency of the State of Texas. SFA employs approximately 1700 full and part-time faculty and staff members. SFA had an enrollment of 12,606 full and part-time students during the fall 2015 semester. Most staff positions are based on a 12-month appointment coinciding with the fiscal year (9/1-8/31). Contracts are executed only for faculty members, and limited other appointments. A nine-member Board of Regents is appointed by the governor of Texas, with each regent serving staggered six-year terms.

1.5 SCHEDULE OF EVENTS*

Issuance of Request for Qualifications	June 3, 2016
Request Closing	June 22, 2016 5:00pm
Evaluation of Responses	June 23, 2016 – June 30, 2016
Notification of Selection for the “Pre-approved List”	July, 2016

*Dates are tentative and subject to change.

1.6 OPEN RECORDS

The parties understand the information exchanged in the negotiation process is confidential to the fullest extent permitted by law, and neither party will disclose such information to anyone other than representatives of the negotiating parties except as required by Texas law. Final awards and contracts, after all negotiations are completed, may be subject to the Texas Public Information Act.

1.7 HISTORICALLY UNDERUTILIZED BUSINESSES

- a. In accordance with Gov't Code 2161.252, Stephen F. Austin State University has determined that subcontracting opportunities are not probable under this contract.
- b. Stephen F. Austin State University is an equal opportunity employer and all Historically Underutilized Businesses (HUBs) are encouraged to participate. In addition, SFA actively promotes a Historically Underutilized Business program in compliance with the State of Texas. Respondents are encouraged to actively seek to subcontract or partner with HUBs in an effort to create an environment that supports, where possible, the HUB program and actively acknowledges and values diversity. More information about HUBs or the University's HUB program can be found at <http://www.sfasu.edu/purchasing/703.asp>.

1.8 CONFIDENTIALITY

Pursuant to the Gramm-Leach-Bliley Act (GLBA), every Service Provider (Contractor), defined as any person or entity that receives, maintains, processes or otherwise is permitted access to nonpublic personal information as defined in 16 C.F.R. § 313.3(n), whether in paper, electronic, or other form, about a university employee or student through its provision of services directly to the university is subject to the following requirements:

- a. The Service Provider (Contractor) must ensure the security and confidentiality of nonpublic personal information as defined in 16 C.F.R. § 313.3(n), protect against any anticipated threats or hazards to the security and integrity of such information and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any university employee or student.
- b. To the extent contractor is provided Stephen F. Austin State University employee or student information owned, possessed or used by Stephen F. Austin State University and that is communicated to, learned, or otherwise acquired by Contractor in the performance of Contractor's duties and obligations under this Agreement, Contractor, its management, employees and agents agree to keep such information confidential, beginning on the date Contractor is first given access to said data and continuing through the term of this Agreement and any time thereafter. Contractor, its employees and agents shall not disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Contractor's, its management's, employees' or agents' own benefit or the benefit of another, any such confidential information, unless required by law. Contractor shall take appropriate safeguards to protect the data and limit access to such to only those representatives of Contractor that must have access for the purposes of this Agreement.

1.9 COST INCURRED IN RESPONDING

All costs directly or indirectly related to preparation of a response to this RFQ or any supplemental information required to clarify your original response shall be the sole responsibility of, and shall be borne by, your firm.

SECTION 2 STATEMENT OF WORK

2.1 SCOPE OF WORK

- 2.1.1 Stephen F. Austin State University, hereafter referred to as "SFA" or "the University", is seeking responses from law firms and attorneys interested in providing outside counsel services in the area(s) of: Intellectual Property, Immigration, Public Finance and Bond Issuance; Financial Law; Real Estate, Tax, Federal Communications Commission (FCC) law, Wills, Trusts and Estates, Health Law, and Oil and Gas, Mineral Interest, and/or Utilities Matters.
- 2.1.2 All work shall be performed under the direction and supervision of the University's Office of the General Counsel. The number and length of contracts resulting from this RFQ and all procedures relating to such contracts are within the discretion of SFA, contingent upon approval of the OAG.
- 2.1.3 All contracts for outside legal services and invoices issued under those contracts are subject to the OAG's administrative rules related to the retention and contracting of outside legal counsel by university systems and institutions of higher education (*Title 1, Chapter 57 of the Texas Administrative Code*). A bidding firm should familiarize itself with the requirements of those administrative rules and review the Outside Counsel Contract template promulgated by the OAG, copies of which are included with this posting in Exhibit D.
- 2.1.4 Upon approval of the OAG, outside counsel may represent the University in court and other legal proceedings.

2.2 INTELLECTUAL PROPERTY

- 2.2.1 Assisting in making presentations and required submissions and obtaining approval of patents and other intellectual property;
- 2.2.2 Preparing resolutions, agreements, contracts, and other documents to which the University is a party and which will be necessary in connection with the issuance of patents;
- 2.2.3 Attending meetings as requested;
- 2.2.4 Preparing patents, licensing agreements, and other such documents;
- 2.2.5 Representing SFA in presentations and proceedings involving patent applications;
- 2.2.6 Representing SFA in presentations and proceedings involving trademark infringement;
- 2.2.7 Representing SFA in presentations and proceedings involving copyright infringement;
- 2.2.8 Rendering advice to the University on intellectual property matters, including patent, trademark and copyright;
- 2.2.9 Assisting on other matters necessary or incidental to the intellectual property operations of SFA.

2.3 IMMIGRATION

- 2.3.1 Representing the University in matters relating to immigration and employment;

- 2.3.2 Representing the University when it recruits and hires international applicants in order to fill vacant faculty or other positions. This involves sponsoring candidates to obtain appropriate work authorization and the University's paying of fees and costs associated with filing the labor certification application.

2.4 PUBLIC FINANCE AND BOND ISSUANCE

- 2.4.1 Preparing all resolutions and other instruments pursuant to which bonds will be authorized, sold and delivered in consultation with the Board of Regents; the Underwriters with respect to the bonds, if any; the Financial Advisor(s); and the offices of the University and its component institutions;
- 2.4.2 Preparing any trust indenture or trust agreements authorizing or securing bonds;
- 2.4.3 Attending meetings of the Board of Regents to the extent required or requested with reference to authorization and issuance of bonds;
- 2.4.4 Attending meetings with prospective bond purchasers or rating agencies to the extent required or requested;
- 2.4.5 Attending meetings with the State Bond Review Board to the extent required or requested;
- 2.4.6 Obtaining approval for the bonds from the OAG and registration of the bonds by the Comptroller of Public Accounts of the State of Texas, as required by law;
- 2.4.7 Supervising the execution of bonds and delivery thereof to purchasers;
- 2.4.8 When so delivered, rendering the opinion covering the validity of the bonds under Texas law and the tax exempt status of the interest thereon under federal income tax laws;
- 2.4.9 Interpreting bond covenants and providing public finance-related advice when requested by the University.

2.5 FINANCIAL

- 2.5.1 Advising and representing the University and in complex financial matters, including but not necessarily limited to the acquisition, purchase or sale of University held business entities, equity shares in such entities, stocks, and other transactions;
- 2.5.2 Preparing and reviewing documents related to corporate and financial matters involving the University, its component institutions, and their affiliated private support organizations;
- 2.5.3 Assisting and representing the University in negotiations related to the matters stated in this section.

2.6 REAL ESTATE

- 2.6.1 Preparing and reviewing contracts and other documents intended for the acquisition, purchase, sale, or lease of real estate.
- 2.6.2 Advising SFA on real estate matters.

2.6.3 Advising SFA on issues related to public-private partnerships.

2.7 TAX

2.7.1 Advising SFA on taxation matters that apply to state agencies and their affiliated private support organizations, including but not necessarily limited to matters related to unrelated business income taxation.

2.7.2 Preparing and reviewing tax returns and information submitted to the Internal Revenue Service and to state taxing authorities.

2.8 FEDERAL COMMUNICATIONS COMMISSION (FCC) LAW

2.8.1 Advising and representing SFA in matters related to radio, television and other mass communication outlets before the Federal Communications Commission and other state and federal agencies.

2.8.2 Preparing and reviewing documents related to licenses, permits, and fees associated with the SFA mass communications outlets.

2.9 WILL, TRUSTS AND ESTATES

2.9.1 Advising and representing SFA and affiliated private support organizations in matters related to planned giving by supporters of the institutions and the acceptance of donor gifts.

2.9.2 Advising as to the creation of legal instruments and structuring of mechanisms to best protect and enhance the growth of donated or other funds.

2.10 HEALTH LAW

Advising and representing SFA in matters related to health law, including medical insurance billing, prompt pay discounts, and the review of health insurance payor contracts.

2.11 OIL AND GAS, MINERAL INTERESTS, AND/OR UTILITIES MATTERS

2.11.1 Advising, preparing, reviewing, and representing SFA as to contracts and leases relating to oil and gas, mineral interests and/or utilities matters.

2.11.2 Assisting, advising, and representing SFA in negotiations to procure natural gas and other utilities.

SECTION 3 INSTRUCTIONS TO RESPONDENTS

3.1 CONTACT INFORMATION

- 3.1.1 All questions regarding the RFQ or response must be forwarded to the Director of Procurement and Property Services:
 Kay Johnson
 P.O. Box 13030, SFA Station
 Nacogdoches, TX 75962
 Phone: 936.468.4037
 Fax: 936.468.4282
 Email: johnsondk6@sfasu.edu
- 3.1.2 Communication or contact with SFA Board of Regents members or University officials regarding this RFQ is expressly prohibited and will result in disqualification of your firm from consideration.

3.2 SUBMITTAL DEADLINE AND LOCATION

- 3.2.1 All responses must be received by SFA no later than 5:00pm, Wednesday, June 22, 2016.
- 3.2.2 Responses are to be submitted to:

MAIL RESPONSE TO:

Stephen F. Austin State University
 Procurement and Property Services
 P.O. Box 13030, SFA Station
 Nacogdoches, TX 75962-3030

HAND DELIVER AND/OR EXPRESS MAIL TO:

Stephen F. Austin State University
 Procurement and Property Services
 2124 Wilson Drive
 Nacogdoches, TX 75962

- 3.2.3 All U.S. Mail addressed to any component of SFA is delivered to a central mail room and redistributed by SFA personnel to the addressee's on-campus post office box. Consequently, there is a possibility of delay between receipt of mail at the central mail room and receipt in the Procurement and Property Services Department. Responses must be in the office of the Procurement and Property Services Department by the time set for RFQ closing in order to be considered, and receipt by SFA at the central mail room will not be deemed sufficient. The university shall not be responsible for responses received after the due date and time. Late responses will not be considered under any circumstances. Properly identified late responses will be returned to the respondent unopened.
- 3.2.4 Faxed or electronically mailed responses will be accepted.
- a. Faxed responses must be faxed to 936-468-4282. The University shall not be responsible for bids or portions of bids received late, illegible, incomplete, or otherwise non-responsive due to failure of electronic equipment or operator error.
 - b. Responses submitted electronically must be emailed to johnsondk6@sfasu.edu and purchase@sfasu.edu. Enter the phrase **RESPONSE – LEGAL-2016** in the subject line of the email message. The University shall not be responsible for or accept electronically submitted bids that are delivered to the any email other than those shown above, whether the error was the fault of the sender or either party's mail server.

- 3.2.5 Responses will be publicly opened Thursday, June 23, 2016 at 8:00am in the office of the Director of Procurement, 2124 Wilson Drive. Only the names of the Respondents will be read aloud.
- 3.2.6 Responses received after the time for closing will be returned to Respondent unopened regardless of the circumstance. It is the responsibility of the Respondent to get the response delivered in a timely manner, regardless of delivery method or circumstances.
- 3.2.7 Responses may be withdrawn at any time prior to the time and date set for RFQ closing.
- 3.2.8 Stephen F. Austin State University reserves the right to accept or reject any or all responses and to waive irregularities or technicalities provided such waiver does not substantially change the offer or provide a competitive advantage to any Respondent in the judgment of Stephen F. Austin State University.

3.3 SUBMITTAL INSTRUCTIONS

- 3.3.1 All responses must be submitted in the format prescribed in Section 3.6.
- 3.3.2 Each Respondent must submit at least one original response with original signatures on the Execution of Offer and one (1) complete copy. If submitting electronically, only one submittal is required.**
- 3.3.3 All responses must be complete and convey all of the information requested to be considered responsive. If the response fails to conform to the essential requirements of the RFQ, SFA alone will determine whether the variance is significant enough to consider the response susceptible to being made acceptable and therefore a candidate for further consideration, or not susceptible to being made acceptable and therefore not considered for award.
- 3.3.4 Each respondent, by submitting a response, represents that the respondent has read and completely understands the request for qualifications documents and agrees to abide by the terms of this RFQ and any resulting agreement. Failure of the selected contractor to fulfill the provisions of this request for qualifications shall in no way relieve the obligation of the Contractor to furnish all services necessary to carry out the provisions of the agreement.
- 3.3.5 Responses shall be signed by a legally authorized representative of the Respondent. Unsigned responses (Exhibit A) will be rejected as a material failure.

3.4 EVALUATION CRITERIA

Evaluation of the responses will be performed by an evaluation committee representing Stephen F. Austin State University. In accordance with Rule 57.4 of the Texas Administrative Code and Texas Government Code, sections 1201.027 and 2254.004, the University will evaluate responses to this RFQ to identify the firm(s) it determines to be the most highly qualified. Selection of outside counsel will be made on the basis of demonstrated competence and qualifications to perform the specified legal services. Fees may not be considered and may not be indicated in responses to this RFQ. The university shall be the sole judge of determining which response(s) represents the best value to the university.

3.5 RESPONSE FORMAT

- 3.5.1 Responses shall be prepared in a straightforward and concise manner, identifying clearly and concisely any deviations, enhancements and other differences that exist between the RFQ and the respondent's proposed services. Emphasis should be placed on responsiveness to the RFQ requirements, completeness and clarity of content and conformance to the RFQ instructions. **Respondents shall organize their response in a point-by-point format according to Section 3.5.2.** Failure to follow point-by-point presentation could be grounds for disqualification.
- 3.5.2 Response shall include the following information and be submitted in the following order:
- a. Required Submittal – **failure to provide any of the following documents will result in disqualification of the response from further consideration**
 - i. Exhibit A – Signed Execution Of Offer
 - ii. Exhibit B – Acknowledgement of Addenda, if any
 - iii. Exhibit C – Form of Response

3.6 ACCEPTANCE AND FORMATION OF AGREEMENT

- 3.6.1 No recommendation for award will be made until Stephen F. Austin State University is fully satisfied that the Respondent is professionally competent and properly equipped to render the specified service.
- 3.6.2 Based on the evaluation, SFA will select responses to establish a "Pre-Approved List" of law firms or attorneys practicing in each of the areas of law identified in Section 2, Statement of Work. The University reserves the right to select one or multiple responses related to each of the areas of law identified in Section 2, Statement of Work.
- 3.6.3 The University guarantees no minimum amount of work to be contracted as a result of being selected for the "Pre-Approved List". As needed, the University will attempt to negotiate a contract at a fair and reasonable price with such firm(s) deemed to be most highly qualified. If a satisfactory contract cannot be negotiated, the University will proceed with another firm.
- 3.6.4 The University reserves the right to negotiate all elements of a contract for legal services with the approval of the OAG, and to approve all personnel assigned to the University's work. If personnel assignments are to be changed, the firm will have to submit resumes of the to-be assigned attorneys and their addition to the contract will be subject to the University's approval.
- 3.6.5 Further, the University reserves the right to terminate a resulting contract for legal services, for any reason, subject to thirty (30) days prior written notice, and upon payment of earned fees and allowable expenses accrued as of the date of termination.
- 3.6.6 Any contract resulting from this RFQ must be approved by the General Counsel Division of the Office of the Attorney General.

**EXHIBIT A
EXECUTION OF OFFER**

In compliance with this RFQ, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services and to comply with all terms, conditions and requirements set forth in the RFQ documents and contained herein.

By signature hereon, Respondent affirms that he/she has not given, offered to give, nor intends 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 submitted Qualifications. Failure to sign the response, or signing it with a false statement, shall void the submitted response or any resulting contracts, and the Respondent may be removed from all bid lists.

By the signature hereon affixed, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership, or institution represented by the Respondent or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State or the Federal antitrust laws nor communicated directly or indirectly the response made to any competitor or any other person engaged in such line of business.

By signature hereon, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident Bidder as defined in Rule 34 TAC 20.38.

Certifications:

Texas Family Code Child Support Certification. By signature hereon, Respondent certifies as follows: "Under Section 231.006, Texas Family Code, the Contractor certifies it is not ineligible to receive the payments specified in the Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate."

Sales Tax Certification. By signing the Agreement, the Respondent certifies as follows: "Under Section 2155.004, Texas Government Code, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Franchise Tax Certification. By signing the Agreement, a corporate or limited liability company, Respondent certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Contractor acknowledges and agrees that if this certification is false or inaccurate, at University's option, the Agreement may be terminated and payment withheld.

Payment of Debts to the State of Texas. That pursuant to Section 403.0551, Texas Government Code, the Respondent agrees that any payments owing to the Contractor under this contract may be applied towards any debt or delinquent taxes that the Contractor owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

The person signing the Response should show title or authority to bind his/her firm in contract.

Federal Employer's Identification Number: _____

Sole Owner should also enter Social Security No.: _____

Respondent/Company: _____

Signature (INK): _____

Name (Typed/Printed): _____

Title: _____

Street: _____

City/State/Zip: _____

Telephone No/Fax No: _____

Email: _____

**THIS SHEET MUST BE COMPLETED, SIGNED, AND RETURNED WITH RESPONDENT'S RESPONSE.
FAILURE TO SIGN AND RETURN THIS SHEET MAY RESULT IN THE REJECTION OF YOUR RESPONSE.**

**EXHIBIT B
ACKNOWLEDGEMENT OF ADDENDA**

Receipt is hereby acknowledged of the following addenda to this RFQ.

Addenda No. _____ Dated _____

Respondent/Company: _____

**Refer to the SFA Procurement and Property Services Department website to
confirm all addenda issued: <http://www.sfasu.edu/purchasing/122.asp>**

**EXHIBIT C
FORM OF RESPONSE**

Having carefully reviewed the specifications and related documents affecting the response to provide outside counsel to Stephen F. Austin State University, the following information is provided in accordance with the Request for Qualifications documents:

1. Overview of the Firm

Provide a brief description of your firm, including the total number of attorneys and employees, the number of attorneys practicing in the area(s) of law for which you are responding, and the number of years the firm has been engaged in such practice in Texas (if on a matter of Texas law) or generally. Explain how your firm is organized and how its resources will be applied to the University's work.

2. Qualifications

Provide a brief narrative of your firm's work since June 2011 assisting higher education clients in the area(s) of law for which you are responding.

3. Resumes

Provide resumes of those persons who would be assigned to serve the University, and indicate specifically the proposed role of each individual. The resumes must clearly specify the number of years the attorney has been licensed to practice law in Texas and/or other jurisdiction, and the number of years' experience in the area(s) of law in which he/she is expected to work for the University. Further, identify who would be assigned as the primary, day-to-day contact for the University.

4. Business Practices

- A. Describe your previous experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm in a co-counsel relationship. Please describe your firm's approach to working with co-counsel, including level of effort, division of duties and providing opinions.
- B. Describe efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's legal services.

5. Conflicts of Interest

Please disclose any actual or potential conflicts of interest. In addition, identify each matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the University or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials.

6. Reference

Please provide names, addresses, and phone number of three references.

EXHIBIT D OUTSIDE COUNSEL CONTRACT

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

This Agreement, including all Addenda (the Addenda are incorporated herein by reference), is hereinafter referred to as the “Outside Counsel 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 the Agency and the Outside Counsel, and does not include the Office of the Attorney General of Texas (“Attorney General” or “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; and

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 Attorney General.

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. The purpose of this OCC is for Outside Counsel to 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 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 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 the Agency requires such

representation, then the Agency must request litigation authority from the OAG and submit a new Outside Counsel Contract to the OAG for approval before filing or responding to litigation matters.

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 ATTORNEY GENERAL, FIRST ASSISTANT ATTORNEY GENERAL, OR SOLICITOR GENERAL. Outside Counsel has the duty to promptly notify the Agency and OAG of the desirability or likelihood of an appeal.

1.2.3 OAG Review of Outside Counsel Invoice and Release of Payment. In addition to OAG approval to contract for legal services, 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.

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 9.12 of this OCC.

Section 3. Obligations of Outside Counsel.

3.1 Duties. Outside Counsel will provide professional legal services to the Agency as described in Addendum A. Outside Counsel shall represent Agency with due professional care as required by applicable law 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 title. 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 and Client Communications. 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 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 should mark confidential or privileged attorney-client communications as confidential. This subsection shall not be interpreted to limit Outside Counsel's duty to provide full disclosure to Agency and the OAG as necessary in Outside Counsel's judgment to represent Agency with due professional care or 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 that Outside Counsel should determine that 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). If Outside Counsel elects to enter into a subcontract, then the Parties agree that all such subcontracts are subject to section 4 (Limitation of 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; 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 the Agency shall not be liable to Outside Counsel for any hourly rates or rate ranges greater than the highest hourly rate or rate range specified in Addendum B unless prior written approval is obtained from the Agency and OAG. Any subcontracted legal counsel must comply with subsection 9.8 (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 performances rendered under this OCC, and any subcontracts thereto, are rendered in compliance with all of the terms of this OCC.

Section 4. Liability.

4.1 Limitation of Liability. The Parties stipulate and agree that the State of Texas and Agency's total liability to Outside Counsel, including consideration for the full, satisfactory and timely performance of all its duties, responsibilities and obligations, and for reimbursement of all expenses, if any, as set forth in this OCC or other liability arising out of any performance herein shall not exceed:

 \$ for this OCC Term.

The Parties stipulate and agree that any act, action or representation by either party, their agents or employees that purport to increase the liability of the State of Texas or 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 the performances 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 currently appropriated to the Agency.

Section 5. Compensation/Expenses.

5.1 Fees to Outside Counsel. Subject to 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. Outside Counsel agrees to the following fee schedule, subject to the limitations described in this OCC (see Addendum B for additional terms and conditions regarding fees/compensation to Outside Counsel).

5.2 Reimbursement of Expenses. 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:

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 adopted under Section 660.043 of the Texas Government Code. The Texas Mileage Guide is currently available on the Comptroller of Public Accounts' website, at: <https://fm.x.cpa.state.tx.us/fm/travel/travelrates.php> (last visited April 2, 2012).

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 attorney for each day requiring overnight 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. Unless otherwise agreed upon by Agency in writing in advance, in-state lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$200.00 per night. Unless otherwise agreed upon by Agency in writing in advance, out-of-state lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$250.00 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-class airfare.

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. Therefore, Agency will not reimburse Outside Counsel for: 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); 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 will 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 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. The Agency may reimburse Outside Counsel for its reasonable and necessary expenses relating to legal research, including online legal research.

While the Agency should be paying Outside Counsel to apply the knowledge and expertise for which it was hired, and not paying Outside Counsel to obtain that knowledge through extensive legal research, the Agency understands that situations arise that justify extensive research on how best to proceed in order to achieve a desired result. Therefore, the need for extensive legal research will be addressed on a case-by-case basis by Outside Counsel and Agency.

5.5 Administrative Staff/Clerks. Agency will not pay for law clerks, law interns, summer interns, or administrative staff, such as secretarial support, librarians, case clerks, and accounting and billing clerks, 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.

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.

6.1.1 General. Agency and Outside Counsel agree to abide by the administrative rules adopted by the OAG governing the submission, review and approval of invoices. These rules are found at Title 1, Chapter 57 of the Texas Administrative Code.

6.1.2 Billing Period. The billing period is the interval (ex. monthly) which determines the frequency Outside Counsel will submit invoices to the Agency. The billing period for this OCC is specified in Addendum B.

6.1.3 Billable Time. Agency will only pay for the services of individuals covered 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.

6.1.4 Submission of Invoices. Outside Counsel must submit invoices to Agency at:

Agency Contact Name
Title
Agency Name
Address
City, State Zip

Agency must submit invoices and other related information to the OAG at the following e-mail address or mailing address:

OCCInvoice@texasattorneygeneral.gov

OR

Attn.: OCC Invoice
Office of the Attorney General
General Counsel Division, Mail Code 074
Post Office Box 12548
Austin, Texas 78711-2548

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 attaching documentation.

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

Outside Counsel will submit the administrative fee to the following address:

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

Checks or money orders must be made payable to the “Office of the Attorney General” and reference the OCC Number.

6.5 Supporting Documents; Right-to-Audit; 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, 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 four (4) years after the later of (1) the expiration or termination of this OCC, (2) an audit relating to this OCC, or (3) litigation relating to 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 and 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 the State’s 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 State 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 2262.003 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 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 other entity 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. The 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 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 the subject of this OCC.

7.4 Remedies. 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.

7.5 Termination by Outside Counsel. Consistent with applicable rules of professional conduct, Outside Counsel may terminate this OCC upon reasonable notice for material breach by Agency.

Section 8. Certifications of Outside Counsel

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

8.1 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 231.006 of the Texas Family Code and acknowledges that this OCC may be terminated and payment may be withheld if this certification is inaccurate.

8.2 Buy Texas. With respect to any services purchased pursuant to this OCC, 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.

8.3 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.

8.4 Franchise Tax. By signing this OCC, 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.

8.5 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 where the representation occurs. Outside Counsel will notify Agency and the OAG 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. An attorney that is not licensed by the State Bar of Texas may not provide legal services and advice concerning Texas law.

8.6 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 are 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.

8.7 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.

8.8 Former Executive Head and Employees of the Agency. Agency and Outside Counsel certify that this OCC is compliant, and will remain in compliance during the OCC term, with Sections 669.003 (Contracting with Executive Head of State Agency) and 2252.901 (Contracts with Former or Retired Agency Employees) of the Texas Government Code.

SECTION 9. GENERAL TERMS AND CONDITIONS

9.1 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.

9.1.1 Outside Counsel will be solely and entirely responsible for its acts and the acts of its agents, employees, subcontractors, and representatives in the performance of this OCC.

9.1.2 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 performances in 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/OR 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.

9.2 Assignment of OCC. Outside Counsel may not assign this OCC, or assign or delegate any right or duty under this OCC, without prior written approval from the Agency and the OAG.

9.3 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, 9.7, 9.8, 9.11, and 9.13.

9.4 Copyright/Intellectual Property. Outside Counsel shall take reasonable measures to protect Agency from material risks of Agency liability known to Outside Counsel for 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.

9.5 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 issue any media release, advertisement, 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.

9.6 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 and shall be given and deemed to have been given immediately if delivered in person to the recipient's address set forth in this subsection, or on the date shown on the certificate of receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving party at the address hereinafter specified.

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

[Outside Counsel Name and Address]

9.6.2 OAG's and Agency's Addresses. The addresses for the OAG and Agency for all purposes under this OCC, except as provided by subsection 6.4, and for all notices hereunder shall be:

Outside Counsel Contract Coordinator
Office of the Attorney General
General Counsel Division, Mail Code 074

Post Office Box 12548
Austin, Texas 78711-2548

[Agency Contact Name]
[Title]
[Agency Name]
[Street Address]
[City, State, Zip]

9.7 Dispute Resolution.

9.7.1 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.

9.7.2 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 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 his/her 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 Government Code.

9.7.3 The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code is Outside Counsel's sole and exclusive process for seeking a remedy for any and all alleged breaches of this OCC by Agency or the State of Texas if the Parties are unable to resolve their disputes under Section 9.7.2.

9.7.4 Compliance with the contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. Neither the execution of this OCC by Agency nor any other conduct of any representative of Agency relating to this OCC shall be considered a waiver of sovereign immunity.

9.7.5 The submission, processing, and resolution of Outside Counsel's claim is governed by the published rules, if any. If no Agency rules have been published, then Title 1, Chapter 68 of the Texas Administrative Code adopted by the OAG pursuant to Chapter 2260, as currently effective, hereafter enacted, or subsequently amended, shall govern.

9.8 Conflict of Interest.

9.8.1 Funds appropriated by the General Appropriations Act may not be expended to pay the legal fees or expenses of Outside Counsel in representing Agency in a contested matter if Outside Counsel is representing a plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies. *See* General Appropriations Act, art. IX, sec. 16.01(j). 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.

9.8.2 Funds appropriated by the General Appropriations Act may not 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 the Agency. *See* General Appropriations Act, art. IX, sec. 16.01(a)(4).

9.8.3 Outside Counsel shall regularly conduct conflicts analyses on its interests and those of its clients and any subcontractor and disclose any actual or potential conflict to Agency.

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

9.9 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. More specifically, Agency shall not directly or indirectly be liable for taxes of any 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.

9.10 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.

9.11 Applicable Law 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 the Agency and/or 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 and/or

defending such litigation. Outside Counsel hereby waives and agrees not to assert: (a) that Outside Counsel is not personally subject to the jurisdiction of a court of competent jurisdiction in Travis County, Texas, (b) that the suit, action or proceeding is brought in an inconvenient forum, (c) that the venue of the suit, action or proceeding is improper, or (d) any other challenge to jurisdiction or venue.

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

9.13 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.

9.14 Insurance Required. Outside Counsel presently maintains malpractice insurance in an amount of not less than [\$].

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.

9.15 Additional Terms. Any additional terms agreed to by Outside Counsel and Agency shall be listed in an optional Addendum C and must be approved by the OAG. These terms shall not be inconsistent or contrary to the Contract terms listed above, and nothing in Addendum C shall remove or modify terms contained in Sections 1 – 9. In the event of any conflict, ambiguity or inconsistency between the terms of Addendum C and Sections 1 – 9 of this Outside Counsel Contract, Sections 1 - 9 shall take precedence and control.

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

[Firm Name]

[Agency]

[Authorized Signatory]
[Firm Address]
[City, State. Zip]
[Phone]
[Fax]
[Email]
Tax ID#

[Authorized Signatory]
[Title]
[Agency Name]

Approved:

By the Office of the Attorney General of Texas

Attorney General or Designee

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

Addendum A

Services

Description of Legal Services to be provided:

[Description]

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

Addendum B

Rates

The hourly rate or rate range for attorneys, paralegals, patent agents, and others working on Agency matters:

Name(s) of Lead Counsel:

For lead counsel, provide documentation of good standing with the relevant licensing authority.

Named Individual or Timekeeper Classification

Hourly Rate or Rate Range

Attorney - Partner
Attorney - Of Counsel
Attorney - Associate
Paralegal
Patent Agent

Other (describe)

Billing Period. The billing period for this OCC shall be: [ex. monthly, quarterly, etc.]

Travel Rate. The rate for travel time for each attorney traveling for Agency matters will be listed below. An attorney's travel rate may not exceed half of that attorney's hourly rate listed above. If a travel rate(s) is not listed below, Outside Counsel may not charge Agency for time spent traveling on Agency mat