



**THE TEXAS  
STATE  
UNIVERSITY  
SYSTEM®**

## REQUEST FOR QUALIFICATIONS

Request for Qualification (“RFQ”) No: 758-25-00093

FOR

**OUTSIDE COUNSEL**

ALL RESPONSES MUST BE RECEIVED NO LATER THAN:

**FRIDAY, JULY 18, 2025 AT 2:30 PM CENTRAL**

Prepared by TSUS Office of General Counsel

**Issue Date: May 21, 2025**

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## Section 1 – General Information

### 1.1 OBJECTIVE

In accordance with the provisions of Texas Government Code Chapter 2254, Subchapter D and Texas Administrative Code, Title 1, Chapter 57, the Texas State University System requests responses to this Request for Qualification (“**RFQ**”) from qualified law firms and attorneys (“**Respondents**”) for the provision of legal services (the “**Services**”), under the direction and supervision of the Texas State University System’s Office of General Counsel (“**OGC**”), in the following areas of law:

- Administrative;
- Construction;
- Criminal;
- Cybersecurity;
- Employment;
- Environmental;
- Export/Import Control Law;
- Federal Communications Commission and Information Technology (FCC laws and regulations);
- Financial;
- Foundation Matters;
- Health;
- Higher Education;
- Immigration;
- Intellectual property;
- International;
- Litigation;
- Oil and Gas, Mineral Interests, and/or Utilities matters;
- Public Finance and Bond Issuance;
- Public School;
- Real Estate;
- Sports Law;
- Tax; and
- Wills, Trusts and Estates.

A description of services requested for each area of law may be found in Section 3.

### 1.2 DESCRIPTION OF TEXAS STATE UNIVERSITY SYSTEM

The Texas State University System (the “**System**”), founded in 1911, is the first higher education system established in Texas. Beginning as an administrative means to consolidate the support and management of state teacher colleges, the System has evolved into a network of higher education institutions stretching from the Texas–Louisiana border to the Big Bend region of West Texas.

Today, seven component institutions offer a broad range of academic and career opportunities. Throughout the System, faculty and staff are preparing students to work in and contribute to our global society. The System and its component institutions (“**Component Institutions**”) are:

- The Texas State University System Administration, Austin, Texas
- Lamar University, Beaumont, Texas
- Sam Houston State University, Huntsville, Texas
- Sul Ross State University, Alpine, Texas
- Texas State University, San Marcos, Texas
- Lamar Institute of Technology, Beaumont, Texas
- Lamar State College Orange, Orange, Texas
- Lamar State College Port Arthur, Port Arthur, Texas

The Texas State University System is governed by a nine-member Board of Regents appointed by the governor. In addition, a nonvoting student regent is appointed annually to the board. The administration, which is led by a board-appointed chancellor, is based in Austin, where it provides support to the Component Institutions and state government.

The current members of the Board of Regents are: Alan Tinsley, Chairman; Stephen Lee, Vice Chairman; Charlie Amato; Duke Austin; Sheila Faske; Don Flores; Russell Gordy; Tom Long; and William Scott. The current student regent is Olivia Discon. Brian McCall, PhD, is Chancellor of the Texas State University System and Secretary to the Board of Regents.

### **1.3 BACKGROUND & SPECIAL CIRCUMSTANCES**

This RFQ and the responses thereto will establish a “**Referral List**” of law firms or attorneys practicing in each of the areas of law identified in **Section 1.1**, so that the OGC, on behalf of the System and its Component Institutions, may contract with those law firms or attorneys, as appropriate, to serve as counsel representing the System and/or its Component Institutions on specific matters as the need arises during the timeframe beginning September 1, 2025 to August 31, 2027.

The number and length of contracts resulting from this RFQ and all procedures relating to such contracts are within the discretion of the System and contingent upon approval of the Office of the Attorney General (“**OAG**”).

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). Respondent should familiarize itself with the requirements of those administrative rules and review the Outside Counsel Contract template (ref. **APPENDIX ONE**) promulgated by the OAG and the memorandum issued by the OAG on July 17, 2023 regarding Outside Counsel Contract Rules, Process Changes, and Community System Updates. (ref. **APPENDIX TWO**). The OAG advises that the Outside Counsel Contract will be updated after the completion of the 89<sup>th</sup> Legislature.



To the extent that Texas Government Code, 402.0212 compels any additional reporting or contracting requirements, the System expects full cooperation from Respondents and any firms selected to enter into contracts for specialized legal services.

It is the policy of the System to make a good faith effort to include participation of Historically Underutilized Businesses ("**HUB**") certified firms in its contracts. A "HUB" is a for profit business that meets the requirements of Texas Government Code, Chapter 2161 and administrative rules of the Texas Comptroller of Public Accounts in 34 TAC Chapter 20, Subchapter B. In order to comply with the System's HUB policy, the System may select, from firms responding to this RFQ, one or more firms to serve as outside counsel in each area of law listed above.

The System will not participate in any programs, nor will it conduct business, with any entity that is found to knowingly discriminate against persons on the basis of race, color, sex, age, national origin, religion, physical or mental disability.

## Section 2 – Notice to Respondents

### 2.1 General Instructions

- A. Respondents should carefully read the information contained herein.
- B. Submittals and any other information submitted by Respondents in response to this RFQ shall become the property of the System.
- C. Failure to comply with the requirements contained in this RFQ may result in rejection of the response.

### 2.2 Point of Contact

Any questions or concerns regarding this RFQ must be directed in writing via email to:

Sandra Poel  
**Email:** [Sandra.Poel@tsus.edu](mailto:Sandra.Poel@tsus.edu)

The System specifically requests that Respondents restrict all contact and questions regarding this RFQ to the above-named individual via email. Discussions (written or verbal) related to the services in this RFQ with parties other than the Point of Contact are grounds for Respondent disqualification.

### 2.3 Submittal Deadline

The System will accept responses until **July 18, 2025 at 2:30 p.m. Central Time.**

NOTE: A public opening of responses will not be conducted for this RFQ.

### 2.4 Preparation and Submittal Instructions

- A. Respondents must complete, sign and return the attached Certification of Qualification (ref. **Section 5**) form as part of the RFQ response. Form must be signed by an officer of the Respondent ("**Contact**") authorized to sign for Respondent's firm and enter into agreements with the System. Failure to sign and return this form will subject Respondent's response to be disqualified.
- B. Submission
  - 1. Responses to the RFQ, including any supplemental printed material referenced with the RFQ, must be submitted and received by the Point of Contact on or before the submittal deadline (ref. **Section 2.3**), as follows:

The Texas State University System  
Attn: Sandra Poel  
601 Colorado Street  
Austin, Texas 78701  
Re: RFQ 758-25-00093

2. The materials must be enclosed in a sealed mailing envelope, box or container. The following items must be clearly visible on the outside of the mailing package: the submittal deadline; the RFQ number; and the name and the return address of the Respondent.

#### C. Number of Copies

Respondents must submit (a) one (1) complete hard copy of the entire response, and (b) one (1) USB flash drive with an electronic copy of the entire response, in a searchable format. The USB flash drive must include a protective cover and be labeled with Respondent's name and the RFQ number. An *original* signature by an authorized officer of Respondent's firm must appear on the Certification of Qualification (ref. **Section 5**) of the electronic copy of the entire response and the paper copy of the submitted response. The paper copy of the Respondent's response bearing an original signature should contain the mark "original" on the front cover of the response. A digital signature is acceptable as an original signature.

#### D. Pricing

Pricing is not an element of the RFQ process and information related to pricing should not be included in response to this RFQ.

- E. Late responses properly identified will be returned to Respondent unopened. Late responses will not be considered under any circumstances.

*NOTE: It is the responsibility of the Respondent to obtain proof of date of mailing and ensure that their response is submitted to meet the deadline date and time requirements.*

- F. Responses submitted by email or facsimile (FAX) are not acceptable in response to this RFQ.

### 2.5 Submittal Checklist

Respondents are instructed to complete and return the following documents as a part of their response. **Failure to return all of these completed documents may subject the response to disqualification.**

- ✓ **Responses to Qualification Criteria (Section 4)**
- ✓ **Signed and Completed Certification of Qualification Form (Section 5)**
- ✓ **If Respondent is a certified Texas HUB, a copy of the HUB certification.**

### 2.6 Criteria for Selection

The evaluation of responses and the selection of qualified Respondents will be based on the information provided by Respondent in its response to **Section 4** of this RFQ. Consideration may be given to additional information if the System deems such information relevant.

The System reserves the right to award any, all or none of the Services described in this RFQ.

## **2.7 Intentionally Omitted**

## **2.8 Schedule of Events**

Below is the ***anticipated*** schedule of events for the RFQ process. The System reserves the right to make modifications to the schedule as needed.

Issuance of RFQ.....May 21, 2025

RFQ Question Deadline.....June 20, 2025 at 12:00 pm

RFQ Submittal Deadline.....July 18, 2025 at 2:30 pm

## **2.9 VALIDITY PERIOD**

By submitting a response to this RFQ, Respondent accepts that the response will remain valid for selection for one or more outside counsel services contracts between the Respondent and the System and its Component Institutions, with such contracts having a starting date during the period September 1, 2025 through August 31, 2027.

## **2.10 PUBLIC INFORMATION**

All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, et seq.) after the solicitation is completed.

- A. The System strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, and *Texas Government Code*.
- B. Respondent is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise exempted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.
- C. Information provided to Respondent by the System, including information from representatives of the System or any of its Component Institutions, and information provided to Respondent by members of the public or any other third party shall belong to the System.
- D. Information created or otherwise produced by Respondent shall remain the exclusive property of Respondent. Respondent acknowledges any final report or papers will be provided in accordance with this RFQ, and that any information contained in any report or papers, which Respondent believes is confidential under Texas law will be clearly designated as such by Respondent.

- E. If the System receives a request for public information for any portion of any final report or papers that have been designated by Respondent to be confidential, the System will provide notice to Respondent and Respondent may submit a brief to the Office of the Attorney General, as provided by Chapter 552, Tex. Govt. Code.

## **2.11 RESERVATION OF RIGHTS**

The System may evaluate the Responses based on the anticipated completion of all or any portion of the Services. The System reserves the right to divide the Services into multiple parts, to reject any and all responses and re-solicit for new responses, or to reject any and all responses and temporarily or permanently abandon the project. The System makes no representations, written or oral, that it will enter into any form of agreement with any Respondent to this RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ.

## **2.12 ACCEPTANCE OF EVALUATION METHODOLOGY**

By submitting its response to this RFQ, Respondent accepts the evaluation process and acknowledges and accepts that the determination of the “qualified” firm(s) will require subjective judgments by the System.

## **2.13 NON-REIMBURSEMENT FOR COSTS**

Respondent acknowledges and accepts that any costs incurred from the Respondent’s participation in this RFQ process shall be at the sole risk and responsibility of the Respondent. Respondent submits a response at its own risk and expense.

## **2.14 CONFLICTS/CONTACT**

Respondent shall not contact existing members of the System Board of Regents, the System employees, including those of Component Institutions, about this RFQ until the resulting contract(s), if any, are fully executed.

## **2.15 OWNERSHIP AND USE OF WORK MATERIAL**

All work material, whether or not accepted or rejected by the System, is the sole property of the System and for its exclusive use and re-use at any time without further compensation and without any restriction.

## **2.16 CONTRACT FORMATION AND CONTRACT ADMINISTRATION INFORMATION**

Firms responding to this RFQ must maintain a Texas office staffed with personnel who are responsible for providing legal services to the System. Attorneys representing the System in matters of Texas law must be licensed by the State Bar of Texas.

In accordance with Texas Government Code, sections 1201.027 and 2254.004, the System will evaluate responses to this RFQ to identify the firm(s) it judges to be the most highly qualified. Fees may not be considered and may not be indicated in responses to

this RFQ. The System will then 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 System will proceed with another firm.

The System reserves the right to negotiate all elements of the contract for legal services, with the approval of the OAG, and to approve all personnel assigned to the System'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 System's approval.

Further, the System reserves the right to terminate any resulting contract for legal services, for any reason, subject to thirty (30) days prior written notice, and upon payment of earned fees and expenses accrued as of the date of termination.

Any contract resulting from this RFQ must be approved by the General Counsel Division of the Office of the Attorney General.

## **Section 3 – Scope of Services Required**

The purpose of this RFQ is to identify a qualified firm or firms to provide the Services as described herein. The successful Respondent, if any, is referred to as the “**Contractor**.” The Services described in this RFQ will be provided to, and on behalf of, the System which includes all Component Institutions.

Contractor will provide legal services to the System and its Component Institutions in one or more of the following areas of law:<sup>1</sup>

### **3.1 Administrative Law**

Advising and representing the System and its Component Institutions with matters pending before governmental agencies and other administrative bodies.

### **3.2 Construction Law**

- A. Advising and representing the System and its Component Institutions on construction matters.
- B. Preparing, reviewing, and negotiating design and construction contracts and other instruments required for the System’s Office of Finance, including, but not limited to, drafting and negotiating public construction contracts; project delivery methods, including design build and other development processes from design to completion; building systems and equipment; public financing; construction related insurance and suretyship issues; construction lien and payment bond claims; design, defect and delay claims; commercial licensing/registration requirements for architects, engineers and relevant others; procurement laws and processes; risk transfer and management strategies; and, green building and sustainability.

### **3.3 Criminal Law**

Advising and representing the System and its Component Institutions in all criminal matters.

### **3.4 Cybersecurity Law**

Advising, representing, and providing training to the System and its Component Institutions in matters related to cybersecurity, privacy, actual or potential data or information security incidents, including but not limited to facilitation of forensics investigation, assessment of consumer and regulatory notification obligations, drafting of notification letters to affected consumers and appropriate regulators, facilitation of remediation services like credit monitoring or identity monitoring for affected consumers, interfacing with regulators, and potentially providing cybersecurity and privacy consultation.

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<sup>1</sup> Note that, should Respondent be selected to provide legal services in multiple areas of law, under the OAG’s Outside Counsel Rules, a separate contract is required for each area.

### **3.5 Employment Law**

Advising, representing, and providing training to the System and its Component Institutions related to complex employment law issues, including but not limited to investigations of employee-related matters, FLSA, employee compensation and benefits, and employment law as it relates to NCAA and Title IX.

### **3.6 Environmental Matters**

Advising and representing the System and its Component Institutions in environmental matters, including but not limited to water rights, groundwater regulation, hazardous waste regulation, air quality issues, environmental permitting, regulatory enforcement actions, and compliance counseling on environmental matters.

### **3.7 Export/Import Control Law**

Advising and representing the System and its Component Institutions regarding U.S. export/import controls and related technology transfer controls, including, without limitation review, revision, implementation or updating of compliance policies and procedures; compliance training; review of deemed export/import or technical data export/import aspects of educational activities; laboratory research, sponsored research contracts and other activities; export/import control classification, jurisdiction, and licensing advice; U.S. economic sanctions, embargoes, denied parties, and related matters; export/import counseling; compliance reviews and voluntary disclosures. In addition, legal services may be provided concerning government contracting issues and application of relevant U.S. laws and regulations relating to same.

### **3.8 Federal Communications Commission (FCC) and Information Technology**

Advising and representing the System and its Component Institutions in matters related to communications, media and information technology matters regulated by the Federal Communications Commission and other federal and state government agencies in matters related to regulatory compliance, transactions, corporate, and litigation in the telecommunications, media, Internet, information services and technology industries, including but not limited to commercial and noncommercial broadcast issues; First Amendment and broadcast journalism legal issues; digital rights, privacy and security issues; and preparing, reviewing, filing, prosecuting, maintaining, and renewing various permits, licenses, and license applications.

### **3.9 Financial**

- A. Advising and representing the System and its Component Institutions in financial matters, including but not necessarily limited to the acquisition, purchase or sale of System or component held business entities, equity shares in such entities, stocks, and other transactions.
- B. Preparing and reviewing documents related to corporate and financial matters involving the System, its Component Institutions, and their affiliated private support organizations.



- C. Assisting and representing the System and its Component Institutions in negotiations related to the matters stated in this section.
- D. Advising and representing the System and its Component Institutions in reviewing, and providing assistance with respect to, various aspects of its investment program, negotiating complex investment documents, including, but not limited to, investment documents associated with certain investments, including alternative asset investments.

### **3.10 Foundation Matters**

Representation and advice regarding the design, formation and operation of foundations and other types of organizations created to support the mission of the Texas State University System and its Component Institutions.

### **3.11 Health Law**

Advising and representing the System and its Component Institutions in matters related to health law, including but not limited to, medical insurance billing, prompt pay discounts, review of health insurance payor contracts, compliance with federal and state laws and regulations on privacy and security of protected health information, including the Health Insurance Portability and Accountability Act (HIPAA), health regulatory and research compliance, investigations, and related matters; and contractual and business transactions; and other general health law matters.

### **3.12 Higher Education Law**

Advising, including but not limited to establishing, creating, and forming international campuses in foreign countries, conducting investigations, representing, and providing training to the System and its Component Institutions on federal and state laws and regulations relating to institutions of higher education, including but not limited to the Family Educational Rights and Privacy Act (FERPA); the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act); Title IX; federal student aid programs regulated by the appropriate federal agency.

### **3.13 Immigration**

- A. Representing the System's Component Institutions in matters relating to immigration and employment.
- B. Representing the Component Institutions when they recruit and hire international applicants in order to fill vacant faculty or other positions. This involves sponsoring candidates to obtain appropriate work authorization and the institutions' paying fees and costs associated with filing the labor certification application.

### **3.14 Intellectual Property**

- A. Assisting in making presentations and required submissions and obtaining approval of patents and other intellectual property.

- B. Preparing resolutions, agreements, contracts, and other documents to which the System is a party and which will be necessary in connection with the issuance of patents.
- C. Attending meetings as requested.
- D. Preparing patents, licensing agreements, and other such documents.
- E. Representing the System and its Component Institutions in presentations and proceedings involving patent applications.
- F. Rendering advice to the System and its Component Institutions on intellectual property matters.
- G. Assisting on other matters necessary or incidental to the intellectual property operations of the System and its Component Institutions.

### **3.15 International Law**

Representation, legal advice, consultation, and guidance regarding international law obligations, accreditation of programs in foreign jurisdictions, and foreign law requirements in the following areas: doing business in foreign jurisdictions, including related registration and tax obligations; collaborating with foreign schools or foreign entities in providing education and teaching services; employment issues regarding university employees and foreign nationals; affiliation, collaboration, research, and other types of agreements with foreign universities and foreign entities; study abroad programs, and contracting and procurement issues in foreign jurisdictions.

### **3.16 Litigation - General**

Representation and advice regarding complex litigation matters, including but not limited to all areas of law listed in Sections 3.1 through 3.23, as well as Texas Public Information Act litigation, commercial litigation, creditors' rights litigation, and third-party issues such as subpoenas and discovery matters.

### **3.17 Oil and Gas, Mineral Interests, and/or Utilities Matters**

- A. Advising, preparing, reviewing, and representing the System and its Component Institutions as to contracts and leases relating to oil and gas, mineral interests and/or utilities matters, and related tax implications.
- B. Assisting, advising, and representing the System and its Component Institutions in negotiations relating to the procurement, sale and/or exchange of natural gas and other utilities.

### **3.18 Public Finance and Bond Issuance**

- A. Prepare or assist in the preparation of the Preliminary Official Statement, the Final Official Statement, or any other disclosure documents for each sale, including review of the information therein describing the bonds, the security therefor and the federal

income tax status thereof, with the understanding that outside counsel will not be expected to independently verify other data contained in the Official Statement and that the Official Statement may so state.

- B. To the extent requested, advise the System with respect to the System's compliance with its undertakings under Rule 15c2-12 or other applicable disclosure rules, promulgated by the Securities and Exchange Commission including assisting with any event notices.
- C. Preparing any trust indenture or trust agreements authorizing or securing bonds.
- D. Attending meetings to the extent required or requested with reference to authorization and issuance of bonds.
- E. Attending meetings with rating agencies to the extent required or requested.
- F. 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.
- G. Supervising the execution of bonds and delivery thereof to purchasers.
- H. 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.
- I. Interpreting bond covenants and providing public finance-related advice when requested by the System.

### **3.19 Public School Law**

Representation and advice regarding public school law issues regarding institutional charter schools and other interactions with K-12 education, including but not limited to, charter school governance; TEA compliance and appeals; special education and Section 504 law, mediations, due process hearings, federal court litigation and federal appeals; administrative grievances and hearings (Staff, Parents, Student, Public); and policy development.

### **3.20 Real Estate**

- A. Preparing and reviewing contracts and other documents intended for the acquisition, purchase, sale, exchange, or lease of real estate, including easements whether the System or Component Institutions are acquiring or disposing of the same.
- B. Advising the System and its Component Institutions on real estate matters.

### **3.21 Sports Law**

Representation and advice regarding compliance with the rules and eligibility regulations of the intercollegiate athletics, including National College Athletic Association (NCAA) and applicable intercollegiate conferences. In addition, advice and counsel relating to

various state and federal laws and regulations relating to intercollegiate athletics, and application of sports law to both international and domestic student athletes.

### **3.22 Tax**

- A. Advising the System and its Component Institutions on any taxation matters, including but not necessarily limited to matters related to state tax, federal income tax, mineral rights tax, capital gains tax, and real estate tax.
- B. Preparing and reviewing tax returns and information submitted to the Internal Revenue Service and to any other taxing authorities.
- C. Representing the System and its Component Institutions before federal, state and/or other tax agencies.
- D. Advising as to creation and structuring of deferred compensation instruments.

### **3.23 Wills, Trusts and Estates**

- A. Advising and representing the System, its Component Institutions, and their affiliated private support organizations, in matters related to wills, trusts, and estates, including but not necessarily limited to, planned giving by supporters of the institutions and the acceptance of donor gifts, handling Cy Pres issues regarding scholarships and other gifts, donations, etc. to System and its Component Institutions.
- B. Advising as to wills, trusts, and estates and the creation of legal instruments and structuring of mechanisms to best protect and enhance the growth of donated or other funds.

## **Section 4 – Qualification Criteria**

RESPONDENT IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFQ CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

To be considered for selection as a Qualified Respondent, Respondents must address each item in this Section. Responses to the following information and materials (the “**Qualification Materials**”) must be in the order asked and following the same numbering format.

### **4.1 Overview of Firm**

Provide a brief description of Respondent’s firm, including the total number of attorneys and employees, list the area(s) of law and the number of attorneys practicing in those area(s) for which Respondent is responding, and the number of years the firm has been engaged in such practice in Texas. Explain how the firm is organized and how its resources will be applied to the System’s work.

### **4.2 Qualifications**

Provide a brief narrative of Respondent’s work since June 2023 assisting higher education clients in the area(s) of law for which Respondent is responding.

### **4.3 Resumes**

Provide resumes of those persons who would be assigned to serve the System 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 System. Further, identify who would be assigned as the primary, day-to-day contact for the System.

### **4.4 References**

Please provide the names, addresses, and phone numbers of three (3) references.

### **4.5 Conflicts of Interest**

Disclose any actual or potential conflicts of interest. Identify each matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the System.

In addition, identify every matter in which the firm represents, or has represented, within the past calendar year, any entity or individual in any litigation matter in which the entity or individual is directly averse to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed state agency officials in connection with their official job duties and responsibilities. “Litigation” means the matter has been filed in the public record in either state or federal court.

## **Section 5 – Certification of Qualification**

**THIS CERTIFICATION OF QUALIFICATIONS MUST BE COMPLETED, SIGNED, AND RETURNED WITH RESPONDENT'S QUALIFICATION MATERIALS. FAILURE TO COMPLETE, SIGN, AND RETURN THIS CERTIFICATION OF QUALIFICATIONS WITH THE QUALIFICATION MATERIALS MAY RESULT IN THE DISQUALIFICATION OF RESPONDENT.**

By submitting a response to this RFQ, Respondent certifies that, to the best of its knowledge, all responses are true, correct and complete.

- 5.1** Respondent acknowledges this RFQ is a solicitation for the submission of qualifications and is not a contract or an offer to contract. Submission of Qualification Materials by Respondent in response to this RFQ will not create a contract between the System and Respondent. The System has made no representations, warranties, or guarantees, written or oral, that one or more contracts with the System will be awarded under this RFQ.
- 5.2** By signature hereon, Respondent hereby certifies that he/she is not currently delinquent in payment of any franchise taxes owed the State of Texas under Chapter 11, Tax Code.
- 5.3** Respondent acknowledges that if Respondent is required to make a certification pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that Respondent does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Respondent does not make that certification, Respondent must indicate that in its Response and state why the certification is not required.
- 5.4** Respondent complies with all federal and state laws pertaining to Equal Employment Opportunities.
- 5.5** By executing this certification, Respondent affirms that he/she has not given, offered, or intends to give at any time hereafter, any economic opportunity, future employment, gift loan, gratuity, special discount, trip, favor, or service to public servant in connection with the submitted response to this RFQ. Failure to sign the certification, or signing it with a false statement, shall void the submitted response or any resulting contracts, and the Respondent shall be removed from all solicitation lists.
- 5.6** 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, codified in Sections 15.01, et. seq., Texas Business and Commerce Code, or the Federal anti-trust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business. By signing this certification, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualified as a Texas Resident Respondent as defined in Rule 1 TAC 113.8.

**5.7 Acknowledgement of Addenda:** The undersigned Respondent hereby acknowledges receipt of the following Addenda issued as a part of this solicitation (initial only if applicable).

No. 1 \_\_\_\_\_ No. 2 \_\_\_\_\_ No. 3 \_\_\_\_\_ No. 4 \_\_\_\_\_ No. 5 \_\_\_\_\_  
**Note:** If there was only one (1) Addendum issued, initial just the first blank after No. 1, not all five (5) blanks above.

Federal Employer Identification Number (FEIN): \_\_\_\_\_

Respondent/Firm: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (typed/printed): \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

**APPENDIX ONE**  
**Outside Counsel Contract**

**(SEE SEPARATE ATTACHMENT)**



## **APPENDIX TWO**

### **Memorandum: Outside Counsel Contract Rules, Process Changes, and Community System Updates**

**(SEE SEPARATE ATTACHMENT)**

# 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 any 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 6.1, 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.

**SIGNATURES FOLLOW**

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

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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 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.
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 and 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 1551.006 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

## APPENDIX TWO



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

To: State Agencies, University Systems, Institutions of Higher Education and Prospective  
Outside Counsel for any of the aforementioned

From: Office of the Attorney General — General Counsel Division

Date: July 17, 2023

Re: Outside Counsel Contract Rules, Process Changes, and Community System Updates

Pursuant to its statutory duties, the Office of the Attorney General (“OAG”) has adopted administrative rules related to outside counsel contracts for state agencies, university systems, and institutions of higher education (individually “agency” and collectively “agencies”) pursuant to statute.<sup>1</sup> In light of continuing updates made to the processes and procedures governing these contracts, the OAG is taking this opportunity to provide agencies updated direction regarding Outside Counsel Contracts (OCCs), including OCC amendments, invoice submission and approval, and administrative fees. Please note that the guidance in this letter supersedes all previously issued Letters to State Agencies. The OAG reserves the right, under its statutory authority, to revise this document and the policies and procedures it details at any time. The best source for information concerning outside counsel matters (including the latest version of this letter) is the OAG’s website at: [Texas Attorney General, Outside Counsel Contracts](https://oag.texas.gov/contracts). Questions which are not answered herein, or in other resources available on the OAG’s website, may be directed to the OAG’s General Counsel Division<sup>2</sup> at: [GCDContracts@oag.texas.gov](mailto:GCDContracts@oag.texas.gov)

### **Introductory Notes**

The Attorney General serves as legal counsel for the state and all its agencies. Agencies may not retain, or utilize services provided by, outside counsel without first receiving authorization and approval from the OAG. If an agency requires any legal services whatsoever from any outside counsel, regardless of the source of funds that would be used to pay for such legal services, or if the services would be provided at no cost, it must first electronically submit to the OAG a Request to Retain Outside Counsel (“RtR”) through the OAG’s online Community system ([Community](#)<sup>3</sup>).

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<sup>1</sup> [See Tex. Gov’t Code § 402.0212\(f\).](#)

<sup>2</sup> Those involved with the outside counsel process in the past may recall the division formerly handling these matters was Financial Litigation and Charitable Trusts (FLD or FinLit), but the unit responsible for outside counsel has been absorbed by the General Counsel Division.

<sup>3</sup> The Community User Guide is on our website here: [Community User Guide](#).

Upon receipt of an RtR from an agency through the online Community system, the OAG will review the agency's submission to determine whether the requested legal services should be provided by the OAG or whether retaining outside counsel would be in the best interests of the state, and for compliance with applicable rules and statutes. Within ten (10) business days after receiving the RtR submission, the OAG will notify the agency that the OAG either (1) approves the RtR and will process an OCC for the agency and outside counsel, (2) denies the RtR, or (3) will notify the agency that additional or corrected information or documentation is required to make a determination. Please be aware that in the outside counsel process the OAG is acting primarily as a regulatory body and not as counsel for state agencies; therefore, the OAG is unable to provide legal counsel and advice regarding the specific business terms the agency negotiates with its proposed outside counsel.

Although the OAG generally will not approve any deviation from the OCC template and the policies and procedures detailed in this document, the OAG recognizes that exceptional and compelling circumstances could necessitate changes or exceptions in rare cases. As a result, the OAG reserves the right to make changes to the OCC or grant exceptions to these policies and procedures if the OAG determines, in its discretion, that it is in the State's best interest to do so. Because the electronic submission process does not allow for any changes to be made to the OCC template, agencies wishing to deviate from the OAG's OCC template must include comprehensive details about its requested changes in its RtR so that the OAG can evaluate them. The OCC template is updated each biennium to incorporate new applicable legislation and improve efficacy. Agencies should not sign engagement letters with any potential outside counsel as they do not comply with applicable laws, rules, and procedures, and are not compatible with the OAG's contract template.

When an RtR is approved, the OAG will route the resulting OCC electronically via DocuSign for signature by the agency and outside counsel.

### **Requests to Retain Outside Counsel**

There are several requirements in the Community system for submitting an RtR and a summary is provided below.

#### *a. Designation of Agency Contact and Responsible Attorney*

Agencies must designate an individual employed by the agency to act as the agency contact and handle all matters and correspondence with the OAG related to the RtR and any resulting contract. If the agency contact is not an attorney, then the agency must also designate a responsible attorney, employed by the agency's Office of General Counsel, or otherwise representing the agency, who must be familiar with all aspects of the RtR and maintain familiarization with any resulting OCC throughout the life of the contract. Agencies must ensure the information for the designated agency contact and/or the responsible attorney is accurate as long as the RtR is in process and any resulting contract is in place.



*b. University Systems and Institutions of Higher Education Requirement for System-Wide Contracts*

University systems and institutions of higher education may not submit separate RtRs on behalf of the system's or institution's individual member schools or universities. More specifically, the system must submit its RtR(s) where the system is the contracting party, and the terms of the resulting contract encompass the system and all its member schools together. Importantly, this requires the system to request the entire amount of the proposed limitation of liability (maximum contract value) applicable to the system and all its member schools in the RtR.

*c. Start and end dates for Outside Counsel Contracts*

The requested start date for an OCC may be a date in the future, or any date from the date of the RtR's submission to the first day of the calendar month in which the RtR was submitted. For example, an RtR submitted April 30<sup>th</sup> may have a start date of April 1<sup>st</sup>, but an RtR submitted May 1<sup>st</sup> may only have a May 1<sup>st</sup> or later start date. Best practice is to submit RtRs well in advance of a requested start date to allow for complete processing of the request including, if necessary, resolution of any issues with the submission. Any request for a start date earlier than the first day of the month the RtR is submitted would only be permitted if the OAG, in its sole discretion, determined that unusual and compelling circumstances exist.

Requested end dates may be any date within the current fiscal biennium (for example, August 31, 2023). If outside counsel services are needed beyond the end of the biennium, then an RtR for a new contract must be submitted. For certain litigation OCCs, there is a potential exception to allow the OCC to extend to the end of the litigation matter, as determined by the agency in consultation with the OAG. Where the date is indeterminate due to ongoing litigation, it may be acceptable to submit an end date for one or more bienniums in the future (e.g., 8/31/2029 or 8/31/2031).

*d. Guidance for Requested Scopes of Service for Outside Counsel Contracts*

In the RtR, the text entered (or attached) for the proposed Scope of Services *will directly become part of the OCC, in its entirety (as Addendum A)*. The Scope of Services must be narrowly tailored to provide the OAG with enough information to make an informed decision about whether the proposed outside counsel representation is appropriate, while still fulfilling the agency's objectives for the representation. Failure to narrowly tailor the Scope of Services will, at best, result in a delay in processing the RtR, and, at worst, could result in the RtR being rejected. Agencies should draft the Scope of Services carefully to obtain the desired results from the proposed outside counsel representation. Additionally, no single OCC may contain a Scope of Services that permits legal representation across more than one practice area unless each is *clearly related to the central subject matter* of the representation. Accordingly, please ensure the Scope of Services in the RtR is limited to one practice area or is specifically tied to one central subject matter to which one or more practice areas clearly relate.

*e. Documents that Must Accompany Requests to Retain*

When submitting an RtR, agencies must attach: (1) an outside counsel's signed Conflicts Disclosure statement<sup>4</sup>; (2) the agency's Affirmation Statement indicating that it has reviewed the Disclosure statement and is satisfied with its choice of outside counsel notwithstanding anything contained in the Conflicts Disclosure<sup>5</sup>; and (3) documentation of the eligibility of the requested Lead Counsel attorney to practice law in the State of Texas, where required, or in the jurisdiction in which the services will be performed. These documents will be included in the DocuSign routing envelope if an OCC is approved. Any RtR not accompanied by these documents will be automatically rejected by the Community system. Additional information about the specific requirements for these documents is below. The agency may submit additional documents if desired (for example, a biography of the proposed Lead Counsel attorney).

Conflicts Disclosures and Agency Affirmation Statements: As mentioned above, outside counsel's Conflicts Disclosure statement must be attached to the agency's electronic submission of the RtR and must be dated no more than 30 (thirty) calendar days prior to the date the RtR is either initially submitted, or, if the RtR requires revisions, the date submitted in its final acceptable form. Outside counsel must sign the statement and attest to its completeness and accuracy. Under section 57.4(d)(1) of the Texas Administrative Code, the Conflicts Disclosure must identify:

[E]very matter in which the firm represents, or has represented, within the past calendar year, any entity or individual in any litigation matter in which the entity or individual is directly adverse to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed agency officials in connection with their official job duties and responsibilities.<sup>6</sup>

And, where matters are listed, it must also "include a short description of the nature of the matter and the relief requested or obtained in each matter and any identifying cause or case number."<sup>7</sup> Additionally, the agency must affirm that it has reviewed the Conflicts Disclosure statement and is satisfied with the choice of the proposed outside counsel notwithstanding anything contained in the disclosure statement.<sup>8</sup> Agency Affirmation Statements must be dated after (or simultaneously with) outside counsel's final Conflicts Disclosure. Meaning, if a Conflicts Disclosure is updated during the RtR process, then an updated Affirmation Statement must also be submitted.

As a point of clarification, the OAG requires that outside counsel disclose any and all conflicts that the entire firm (including any offices located outside the State of Texas) has to any and all agencies of the State of Texas, not merely the agency that is a party to the OCC and that requirement is an ongoing obligation for outside counsel which continues throughout the life of the contract. Outside counsel must monitor its conflicts for the duration of its representation and

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<sup>4</sup> 1 Tex. Admin. Code § 57.5(e).

<sup>5</sup> *Id.*

<sup>6</sup> 1 Tex. Admin. Code § 57.4(d)(1).

<sup>7</sup> *Id.* § 57.4(d)(2).

<sup>8</sup> *Id.* § 57.4(e).

disclose to the agency and the OAG any existing or potential conflicts that arise concerning the agency, the OAG, or the State of Texas.

The OAG will not modify, alter, waive, or allow agencies to waive this disclosure requirement absent exceptional and compelling circumstances unique to the specific law firm or representation sought.

*f. Total Liability to Outside Counsel*

The limitation of liability amount specified in the contract is the maximum value of the contract and is entered in Community as the “Anticipated Legal Costs.” The total of all legal service fees and expenses, regardless of the funding source or method, cannot exceed the limitation of liability amount (i.e., no payment over this amount may be made to outside counsel). Under no circumstances will expenses or fees relating to the representation be exempted from the limitation of liability.

*g. Competitive Procurement Process*

Unless good cause exists, an agency is required to publish a Request for Qualifications (“RFQ”) before selecting outside counsel, regardless of the anticipated maximum liability of the OCC.<sup>9</sup> The RFQ must be published in the Electronic State Business Daily for a minimum of 30 (thirty) calendar days. The RFQ may also be placed in other publications, such as the Texas Register, at the agency’s discretion. Because the OAG will not review or approve an agency’s RFQ, the agency is not required to provide a copy of the RFQ to the OAG. Likewise, it is up to the respective agency to determine how long a response to a published RFQ will be valid.

If an agency would like an exemption from the RFQ process requirements, it must *affirmatively certify in its RtR that the agency has good cause or a reasonable justification* for the exemption. The OAG does not determine what constitutes good cause or a reasonable justification; rather, such determinations must be made independently by the agency in consultation with agency’s internal legal counsel and/or agency leadership.

*h. Addendum B of the Outside Counsel Contract*

When submitting an RtR in the Community system, please be mindful of the following for Addendum B, which includes, Timekeepers, Rates (including Travel Rates), and Billing Period:

Timekeeper Rates and Classifications: Unless expressly approved by the First Assistant Attorney General in advance, hourly rates for attorneys shall not exceed \$525/hour, and hourly rates for non-attorney legal work (generally limited to paralegals, legal secretaries and legal assistants) shall not exceed \$225/hour.

- All other timekeepers (for example, Patent Agents) must be identified as “Other” with their specific title(s) entered in the classification field. These timekeepers are also generally limited to \$225/hr, but an agency may provide written justification for an increased rate for the OAG’s consideration.

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<sup>9</sup> [1 Tex. Admin. Code § 57.4.](#)

- “Not to exceed” — Agencies that wish to use hourly rates to identify an entire classification of employees must use a “not to exceed” rate. For example, such a rate would appear as “Partners’ rates shall not exceed \$300/hr.” This would mean that all partners are covered for any rate up to \$300/hour. If the agency wants to ensure that only certain individuals are providing their legal services, naming each individual and their specific hourly rate can be done. An example of identifying a particular individual, the individual’s classification, and the individual’s hourly rate would be “Susan Smith, Partner, not to exceed \$250/hr.”
- Be aware that outside counsel may not bill for administrative staff/support, law clerks, or interns under Section 5.5 of the OCC (if the contract is based on the OAG’s current template).
- Additionally, a Default Classification is included in Addendum B to allow the OAG more flexibility to approve invoices containing time billed by Attorneys, Paralegals, and Legal Assistants not otherwise listed in Addendum B. For example, if Addendum B includes “Attorney, Partner: \$525” and “Attorney, Associate: \$450,” but does not include “Attorney, Of Counsel,” and an invoice is submitted for OAG approval with time billed for “Attorney, Of Counsel,” rather than deny that billed time, the “Of Counsel” attorney’s hourly rate may default to the lower of either the lowest attorney rate expressly listed in Addendum B, or the hourly rate listed in the invoice.

Fixed Fee or Fee Schedule for Projects or Matters: Instead of using hourly rates, some legal services (for example, immigration, bond, or intellectual property work), may be appropriately billed by a fixed fee per project. An example of a fixed fee per project would be “H-1B Visa Petition, \$900.” If the agency is requesting an OCC with both fixed fee and hourly rates, an agency must draft and upload its own Addendum B that includes language specifically directing when either the fixed fee or hourly rate ranges will be used because the Community system cannot populate billing terms for mixed and hourly services into a standard Addendum B. For example, a contract involving both fixed fees for H-1B Visa Petitions and hourly rates for other services would state “Preparation of H-1B Visa Petition, \$900. All other services are governed by the identified hourly rates.” *Please note, fixed fees should be treated as set amounts, rather than as not-to-exceed limitations.*

For any Invoices with amounts deviating from the fees established by the Outside Counsel Contract, the reason(s) for the deviation(s) must be clearly identified on the Invoice itself. Otherwise, the OAG will be unable to approve payment of the Invoice.

If a subcontractor is providing legal services at a fixed fee, a statement must be provided to the OAG certifying that the time spent on the flat fee work was, at a minimum, comparable to what would have been spent had the firm been billing at the maximum hourly rate allowed under Addendum B of the Outside Counsel Contract.

Billing Period: The billing period is the interval that determines the frequency outside counsel will submit Invoices to the agency. The agency and outside counsel will determine and specify the billing period in each contract. Most frequently, the billing period will be monthly and in a calendar month format (i.e., beginning the first day and ending the last day of the calendar month). Additionally, outside counsel must submit the Invoice(s) to the agency within one calendar month from the end of the relevant billing period covered by the Invoice. Any untimely invoice

submissions by Outside counsel will delay processing and may constitute breach of the outside counsel contract, which could result in an Invoice being disapproved for payment. Agencies likewise must review Invoices and submit Voucher Requests to the OAG in a timely manner.

Travel: By setting hourly travel rates in an OCC, the agency and outside counsel are permitted, but not required, to pay for time spent traveling to or from a place where legal services are to be provided to the agency. Note that an attorney's travel rate may not exceed half of that attorney's standard hourly rate under the OCC. The OAG does not consider it a best practice for attorneys to provide legal services while traveling; however, if an attorney is providing legal services while traveling, the attorney may charge the standard hourly rate for the time spent providing those legal services. Additionally, any timekeepers traveling for work must either be named or fall under one of the timekeeper classifications in Addendum B of the contract; this applies even if the firm is only providing work under a fixed fee schedule.

### **Invoices for Legal Services and Expenses Under Outside Counsel Contracts**

Please note, the OAG establishes a contract number for each OCC upon its approval. An agency may establish its own contract number in addition to the OAG's contract number; however, an agency must note the OAG contract number in all correspondence with the OAG.

#### *a. Invoices*

Outside counsel must prepare and submit to the agency correct and complete Invoices and Invoice Summaries for legal services and expenses in accordance with the OCC and the OAG's administrative rules. Invoices cannot be paid by the agency, regardless of the source of funds used, without the prior approval of the OAG. Therefore, after the agency reviews and approves an outside counsel Invoice in accordance with the Outside Counsel Contract and the administrative rules, it must seek approval from the OAG to pay the Invoice.

When an agency determines that an Invoice, or a portion thereof, should be paid, the agency must submit a Request for Voucher Approval through the online [Community](#) system. The completed Request for Voucher Approval, a copy of the subject Invoice(s), and all other information required to be submitted by the administrative rules make up one "Voucher Request".

An agency should submit one Voucher Request per billing period per contract (as specified in the OCC). However, one Voucher Request may include multiple Invoices from the same billing period. Multiple Voucher Requests covering the same billing period as other Voucher Requests for the same contract will be rejected as incomplete and may result in an Invoice not being approved for payment.

Outside counsel must submit Invoice(s) to the agency for review withing one calendar month from the end of the relevant billing period covered by the Invoice. The agency must submit Invoices and the corresponding Request for Voucher Approval to the OAG within 25 (twenty-five) days<sup>10</sup> of the agency's receipt of a "correct and complete Invoice"<sup>11</sup> from outside counsel.

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<sup>10</sup> [Tex. Gov't Code § 402.0212\(b\)\(1\).](#)

<sup>11</sup> [See 1 Tex. Admin. Code § 57.6\(b\) \(defining "correct and complete Invoice"\).](#)

The 25-day-period begins once the last, timely, correct and complete Invoice for the relevant billing period has been received by the agency.

Outside counsel's failure to timely submit each Invoice constitutes a breach of the OCC. Failure to timely submit a Voucher Request to the OAG for review may result in the OAG declining to approve payment of the Invoice(s) included in the Voucher Request, unless the OAG determines that good cause exists for the delay. *No late Voucher Request submissions that include late Invoices will be reviewed by the OAG unless a reasonable justification for the delay has been provided.*

Once the Voucher Request is received and reviewed by the OAG, the Invoice(s), or a portion thereof, will either be approved or rejected, or the agency will be notified that more information is required. If approved, the OAG will issue a Voucher Approval to the agency. The agency may then enter the payment information into the Uniform Statewide Accounting System ("USAS") or, if permitted, otherwise proceed to pay the Invoice. Agencies should use Comptroller Code 7258 when entering payment information into USAS. Once an agency receives a Voucher Approval from the OAG, payment can occur when the agency enters the payment information and approves the documentation in USAS.

If any Invoices under a Voucher Request are rejected, or if the OAG has questions regarding a Voucher Request, it will contact the agency to attempt to resolve the issue. *The OAG cannot discuss invoice issues with outside counsel.*

#### *b. Expenses*

If outside counsel bills for allowable expenses, copies of actual, itemized receipts must be submitted to the agency. Additional details of what may and may not constitute reimbursable expenses are found in Sections 5 and 6 of the OCC (if the contract is based on the OAG's current template). Examples of expenses that are not reimbursable include, without limitation: gratuities; alcohol; non-coach class airfare or premium or preferred benefits related to airfare; routine copying charges; fax charges; routine postage; office supplies; telephone charges; local travel (within 20-mile radius of office), including mileage, parking, and tolls; all delivery services incurred by internal staff; air-conditioning; electricity or other utilities; and internet charges.

The OAG shall review outside counsel's Invoices only to determine whether the legal services for which the agency is billed were performed within the term of the contract, and are within the scope of the legal services authorized by the contract, and are therefore eligible for payment.<sup>12</sup> Agencies shall submit to the OAG a statement with each Invoice confirming the agency-approved amounts to be paid to outside counsel for legal services and expenses allowed under the contract and the amount of any expenses allowed under the contract which were paid for directly by the agency or any party other than outside counsel.

The agency shall also include with any Voucher Request (and associated Invoices) submitted to OAG for approval, a written certification, as provided by the Request for Voucher Approval, that the legal services for which the agency is billed were performed within the term of the contract,

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<sup>12</sup> [Tex. Gov't Code § 402.0212\(b\).](#)



are within the scope of the legal services authorized by the contract and are reasonably necessary to fulfill the purpose of the contract.<sup>13</sup> This certification is part of the submission process in the Community system.

### **Administrative Fee**

Outside counsel must pay an administrative fee to the OAG for the review of Invoices.<sup>14</sup> The fee is non-refundable and is due each fiscal biennium. Outside counsel may not charge or seek reimbursement from the agency for the fee.

The initial administrative fee is due to the OAG within 30 (thirty) calendar days of the date the proposed OCC has received final approval by the OAG and been returned to the agency. If outside counsel has not submitted the required administrative fee within that time, the OAG's approval of the OCC may be withdrawn. Any Invoice submitted to the OAG for review as part of a Voucher Request prior to the receipt of the administrative fee will be deemed ineligible for payment until outside counsel submits the requisite administrative fee to the OAG. For OCCs that cross the State's fiscal biennium, separate administrative fees are due to the OAG on September 1 of each subsequent biennium covered by the term of the contract. *Please note that an administrative fee is not due for each Invoice submitted.*

The OAG has granted a very narrow and limited exemption from the administrative fee and Invoice review only for university systems and institutions of higher education regarding certain legal services that are solely related to the prosecution and management of system or institution intellectual property, which includes patents, trademarks, and copyrights. This limited exemption does not apply to the enforcement of intellectual property rights—including litigation—or corporate legal services relating to the monetization of intellectual property. The OAG may rescind this limited exemption at any time. If the OAG decides to conduct periodic testing of Invoices under an OCC that qualified for this limited exemption, the exemption will be deemed rescinded, and the applicable non-refundable administrative fee is due immediately upon notice by the OAG that testing will occur. If an exemption is not requested and/or the OCC's Scope of Services does not qualify for the exemption, but it is subsequently discovered that the agency has been paying invoices without submitting and receiving approval of Voucher Requests, the agency must contact the OAG immediately.

The administrative fee is set on a sliding scale, based on the contract maximum value<sup>15</sup>, as follows:

<b>Limitation of Liability Amount</b>	<b>Administrative Fee</b>
Less than \$2,000.00, but more than \$0.00	\$100.00
Equal to or greater than \$2,000.00 but less than \$10,000.00	\$200.00
Equal to or greater than \$10,000.00 but less than \$50,000.00	\$500.00
Equal to or greater than \$50,000.00 but less than \$150,000.00	\$1,000.00

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<sup>13</sup> [\*Id.\* § 402.0212\(b-1\).](#)

<sup>14</sup> [\*Tex. Gov't Code\* § 402.0212\(c\).](#)

<sup>15</sup> Please note, the full administrative fee is owed regardless of what, if any, amount is subsequently invoiced under the OCC.

Equal to or greater than \$150,000.00 but less than \$1,000,000.00	\$1,500.00
Equal to or greater than \$1,000,000.00	\$2,000.00

**Please note that no administrative fee is due on a contract with a maximum liability of \$00.00.**

If the OCC is amended and the original limitation of liability amount is increased to an amount that would require a higher fee, outside counsel shall pay the difference between the original lesser fee, if already paid, and the new higher fee upon the OAG's approval of the amendment and its return to the agency.

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

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

### **Amending an Outside Counsel Contract**

Any change to an executed and OAG-approved OCC must be supported by a written amendment and that amendment must also be approved by the OAG. An agency wishing to amend a contract must submit an amendment request through the Community system. Common reasons for amendment requests include increasing the limitation of liability amount or extending the term (end date). Please ensure the data entered in Community for the amendment terms conform to the OCC amendment template. A copy of the template is available in Community.

### **Access to the Community System**

Community may be used by anyone within an agency who needs access to OCC information. We strongly encourage agencies to review the [Community User Guide](#) for comprehensive details. User profiles in Community are broken into categories:

- Agency Head: Responsible for reviewing and administering the rights for users with Contract and Voucher Requester roles for their agency. The Agency Head also has all the rights of the Contract and Voucher Requester roles. Only one Agency Head permitted per agency.
- Contract and Voucher Requester: Has access to all Community activities except for user administration. Agencies may have more than one Contract and Voucher Requester.
- Contract or Voucher Requester: May only view and submit information and documents related to either RtRs or requests for voucher approval for their agency. An agency may have more than one Contract Requestor or Voucher Requester. Note, these roles are not required if a user with the Contract and Voucher Requester role will manage both RtRs and Voucher Requests for the agency.



### **In Closing**

Should you have any additional questions regarding the outside counsel process, please do not hesitate to contact the OAG's General Counsel Division using the information below. Thank you for your attention to these important matters and the Attorney General looks forward to being of service to you.

### **Important Addresses and Contact Information**

Requests to Retain Outside Counsel and Outside Counsel Contracts and Amendments:

[GCDCContracts@oag.texas.gov](mailto:GCDCContracts@oag.texas.gov)

Requests for Voucher Approval:

[OCCInvoice@oag.texas.gov](mailto:OCCInvoice@oag.texas.gov)

Mail may be sent to:

Outside Counsel Contracts  
Office of the Attorney General  
General Counsel Division, Mail Code 074-1  
Post Office Box 12548  
Austin, Texas 78711-2548

Outside Counsel must submit administrative fees to:

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

If you have additional questions, you may reach the General Counsel Division at:

(512) 936-1403 or  
(512) 463-9906