



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

MEMORANDUM

TO: State Agencies, University Systems, and Institutions of Higher Education

FROM: Office of the Attorney General – General Counsel Division

DATE: April 2, 2012

RE: New Outside Counsel Rules and Templates

Pursuant to Subsection 402.0212(f) of the Texas Government Code, the Office of the Attorney General (“OAG”) has recently adopted new administrative rules related to the retention and contracting of outside legal counsel by state agencies, university systems, and institutions of higher education (collectively “agencies”). The OAG has also taken this opportunity to revise many of its processes, procedures, forms, and templates related to the retention and contracting of outside counsel. The purpose of this memorandum is to inform you of those new processes and procedures, and to provide you with a copy of the new administrative rules (Attachment A and Title 1, Chapter 57 of the Texas Administrative Code) and all relevant forms and templates. Because of the many changes, we ask that you review this memorandum and all attached information carefully. We also ask that you share this memorandum and all attached information with your current and potential outside counsel so that they can perform a review as well.

Retention of Outside Legal Counsel. The Attorney General serves as the state’s legal counsel, therefore the OAG serves as legal counsel to all agencies. Agencies may not retain or select outside counsel without first receiving authorization and approval from the OAG to do so. If an agency requires legal services from outside counsel, it must first submit to the OAG a completed Request to Retain Outside Counsel form (Attachment B). The request form and any supporting documentation should be sent to the following e-mail address: general.counsel@texasattorneygeneral.gov.

Upon receipt, the OAG will review the request form 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. Within ten (10) business days after receiving the request, the OAG will notify the agency in writing that its request has either been approved or denied, or that additional information is required to make a decision. Please remember that an approval to retain outside counsel does not constitute approval of an outside counsel contract.

Competitive Procurement Process. Previously, an agency was generally required to publish a Request for Proposals or a Request for Information before selecting outside counsel. Now, unless an exemption is granted by the OAG, an agency is required to publish a Request for Qualifications (“RFQ”) before selecting outside counsel. The RFQ must be published in the Texas State Business Daily for a minimum of thirty (30) calendar days. The RFQ may also be placed in other publications, such as the Texas Register, at the agency’s discretion. Please note that the RFQ may be published before or after the Request to Retain Outside Counsel form has been submitted to the OAG. The OAG will not review or

approve an agency's RFQ, therefore the agency is not required to provide a copy of the RFQ to the OAG.

If an agency would like an exemption from the RFQ process requirements, it must provide the OAG with a reasonable justification for the exemption in its Request to Retain Outside Counsel form. Previously, the OAG granted a waiver from the competitive procurement process requirements if the maximum liability of an outside counsel contract was not anticipated to equal or exceed \$25,000. Now, however, agencies must follow the RFQ process requirements regardless of the anticipated maximum liability of a contract, unless a specific exemption is granted by the OAG.

Previously, responses to Requests for Proposals and Requests for Information were generally valid for two years after publication of the request. Now, the respective agency will determine how long a response to a published RFQ will be valid, consistent with RFQ limitations.

Outside Counsel Contract. After obtaining authorization to retain outside counsel and completion of the RFQ process (unless exempted), an agency may enter into a contract with its selected outside counsel. However, that contract must be approved by the OAG in order to be valid and enforceable. The OAG has revised its standard Outside Counsel Contract ("OCC") template (Attachment C), and as of the date of this letter, that template must be used by the agency and outside counsel. If an agency determines that a change to the contract template is required in a particular instance, the agency must request, in writing, and receive permission from the OAG to make the change before the modified contract is used. Agencies should not sign engagement letters with any potential outside counsel because such letters do not comply with applicable laws, rules, and procedures, and are not compatible with our contract template.

The agency and the outside counsel will complete and sign the outside counsel contract before submitting the contract to the OAG for review. Previously, the OAG required three signed copies of the contract. Now, the OAG will only require one signed copy to be submitted. The outside counsel contract and any supporting documentation should be sent to the following e-mail address: **general.counsel@texasattorneygeneral.gov**. After reviewing the contract, the OAG will either approve the contract and return it to the agency or notify the agency that the contract has been rejected.

When completing the outside counsel contract, please be mindful of the following changes:

Total Liability to Outside Counsel - The limitation of liability amount specified in the contract.

- Legal service fees and expenses cannot exceed the limitation of liability amount.
- All amounts paid to outside counsel, regardless of source, cannot exceed the contract cap amount.

Contract Term - The start date and end date of the contract term.

- Unless approved by the OAG, most contract terms will end on or before August 31st of the current biennium.
- Contracts for active litigation may be allowed to end, regardless of the biennium, upon the conclusion of the litigation.

- Except by amendment, the agency shall no longer have the right to extend the term of the contract. Previously, agencies had a right (section 2.2 of the previous contract template) to extend the term of the contract by 12 months.

Addendum B to the Contract:

Timekeeper Rates – Unless expressly approved by the First Assistant Attorney General in advance, hourly rates for attorneys shall not exceed \$525/hour, while hourly rates for paralegals shall not exceed \$225/hour. Outside counsel may not bill for administrative staff, law clerks, or interns. A rate range for each timekeeper classification can be used instead of specifically identifying each timekeeper by name and hourly rate. A rate range provides more flexibility during the term of the contract than specifically identifying each timekeeper. However, if the agency wants to ensure that certain timekeepers are providing the legal services, identifying each timekeeper may be preferred.

- An example of rate range would be “Partners are \$250/hr to \$300/hr.”
- An example of specifically identifying a timekeeper would be “Susan Smith, Partner, \$250/hr.”

Previously, the hourly rates or rate ranges specified in a particular contract were generally required to remain unchanged, and an attorney listed at a particular rate or range could not be reclassified more than once during a twelve month period. These limitations will no longer apply. However, any changes to the contract will still require OAG approval (see “Amending an Outside Counsel Contract” discussion on page 6 of this memorandum).

Fixed Fee or Fee Schedule for Projects or Matters - Instead of using hourly rates, some legal services, such as 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 is \$900”

Billing Period – The billing period is the interval specified in the contract which determines the frequency Outside Counsel will submit invoices to the agency. The agency and outside counsel will determine the billing period for a particular contract. For most contracts, the billing period will likely be monthly.

Travel Rate – Previous versions of the contract template did not specify a rate for travel time for attorneys traveling on Agency matters. In Addendum B of the new contract template, the Agency and Outside Counsel are now permitted, but not required, to pay for travel time by setting travel rates. Note that an attorney’s travel rate may not exceed half of that attorney’s standard hourly rate under the OCC. If travel rates are not set in an OCC, Outside Counsel may not charge or seek reimbursement for time spent traveling on Agency matters. If an attorney is providing legal services while traveling, however, the attorney may charge the standard hourly rate.

Contract Number - The OAG establishes a contract number for each outside counsel contract. Agencies may establish their own contract number in addition to the OAG's Contract Number; however, agencies must note the OAG contract number in all submissions to the OAG.

Law License - An attorney must be licensed by the State Bar of Texas in order to provide legal services and advice concerning Texas law, regardless of whether the attorney is actually located in Texas. If an OCC will require Outside Counsel to provide legal services and advice on Texas law, then a Texas licensed attorney must be utilized and named in Addendum B. A law firm with no Texas licensed attorneys will not be authorized to provide legal services and advice concerning Texas law.

Invoices for Legal Services and Expenses. Outside counsel will prepare and submit to the agency correct and complete "Invoices" and "Invoice Summaries" for legal services and expenses in accordance with the outside counsel contract and 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 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 complete a Request for Voucher Approval form (Attachment D). The completed Request for Voucher Approval form, a copy of the invoice at issue, and all other information required to be submitted by the administrative rules should be sent to the following e-mail address: **OCCInvoice@texasattorneygeneral.gov**. Note that an agency may only submit one Request for Voucher Approval form per billing period per contract, but one request form may be used for multiple invoices from the same billing period.

The agency must submit the Request for Voucher Approval form and other required information to the OAG within 10 business days of the agency's receipt of a correct and complete invoice from the outside counsel.

Once the Request for Voucher Approval form and other information are received and reviewed by the OAG, the invoice(s), or a portion thereof, will either be approved or rejected. If approved, the OAG will issue a Voucher Approval to the agency, which may then enter the payment information into the Uniform Statewide Accounting System ("USAS") or, if permitted, otherwise proceed to pay the invoice(s). Agencies should begin using Comptroller Code 7258 as soon as practicable when entering payment information into USAS. Comptroller Code 7246 will remain a viable option for the immediate future, but agencies will not be permitted to use that code after the current biennium. Previously, after issuing a Voucher Approval to an agency, the OAG would also approve payment of an invoice in USAS. Now, however, the OAG will no longer perform that second approval. Therefore, 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 an invoice(s) is rejected, or if the OAG has questions regarding an invoice(s), it will contact the agency to attempt to resolve the issue. The OAG will not discuss invoice issues with the outside counsel.

Expenses. If an outside counsel bills for allowable expenses, copies of actual receipts must be submitted. The following is a list of some of the expenses that are not reimbursable: gratuity; alcohol; non-coach class 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.

Administrative Fee. Pursuant to Subsection 402.0212(c) of the Texas Government Code, outside counsel must pay an administrative fee to the OAG for the review of invoices. The fee is non-refundable and outside counsel may not charge or seek reimbursement from the agency for the fee.

For outside counsel contracts that were entered into on or after June 17, 2011, the administrative fee is due to the OAG on the date that the outside counsel submits to the agency its first invoice after the adoption date of the administrative rules. No administrative fee is due for current contracts that were entered into before June 17, 2011. Any invoice submitted to the OAG for review after the effective date of the administrative rules will be deemed ineligible for payment until the outside counsel submits the requisite administrative fee to the OAG. For outside counsel contracts that cross the state's fiscal biennium(s), separate administrative fees are due to the OAG for every fiscal biennium covered under the term of the contract.

Please note that an administrative fee is not due for each invoice submitted. For most contracts, it will be a one-time fee.

The administrative fee is set on a sliding scale, based on the contract cap amount, as follows:

Limitation of Liability Amount	Administrative Fee
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
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

If the outside counsel contract is amended and the original limitation of liability amount is increased to an amount that would require a higher fee, the outside counsel shall pay the difference between the original lesser fee, if already paid, and the new higher fee.

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

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

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

Amending an Outside Counsel Contract. Any amendment to an approved outside counsel contract must also be approved by the OAG. An agency wishing to amend a contract must first submit to the OAG a completed amendment that is signed by the agency and outside counsel. We have included two amendment templates that may be used (Attachment E). The amendment and any supporting documentation should be sent to the following e-mail address: **general.counsel@texasattorneygeneral.gov**.

Should you have any questions regarding these matters, please do not hesitate to contact the OAG's General Counsel Division. Our office will be hosting a training session for all agency outside counsel liaisons. The date, time, and location of this training session will be posted on the OAG's website. Thank you for your attention to these important matters.

Important Addresses and Contact Information

The Request to Retain Outside Counsel and the Outside Counsel Contract:

general.counsel@texasattorneygeneral.gov

The Request for Voucher Approval:

OCCInvoice@texasattorneygeneral.gov

Mail may be sent to:

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

Questions may be directed to Candace Harris, Outside Counsel Contract Coordinator, General Counsel Division – Telephone Number (512) 463-9906

Electronic versions of all relevant documents, including the contract template, can be found on the OAG website: **www.texasattorneygeneral.gov**

Attachment A

New Administrative Rules

Title 1, Chapter 57 of the Texas Administrative Code

§57.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Agency--A department, commission, board, authority, office, or other agency in the executive branch of state government, including university systems and institutions of higher education as defined by §61.003 of the Education Code, but excluding public junior colleges.
- (2) Chief Administrator--Has the meaning defined by §660.002(4) of the Government Code.
- (3) Contingency Fee--Has the meaning defined by §2254.101(1) of the Government Code.
- (4) Invoice--An itemized list of legal services provided, and fees, charges, or expenses associated with those services, by Outside Counsel to an Agency pursuant to an Outside Counsel Contract.
- (5) Invoice Summary--As provided by the Outside Counsel Contract, a document furnished by Outside Counsel to the Agency that supports a submitted Invoice. The Invoice Summary must indicate the total number of hours worked by each legal professional during the billing period and the total number of hours billed by each timekeeper during the billing period; or, if the fee is based on a fixed fee basis or fee schedule, the number and type of projects or matters. The Invoice Summary must also include a subtotal for all legal fees, expenses, and the total amount of the Invoice, as well as the total amount of all Invoices submitted to the Agency to date under the Outside Counsel Contract.
- (6) Outside Counsel--An attorney or law firm selected by an Agency to provide legal services. The term does not include a full-time employee of the Agency or the Office of the Attorney General.
- (7) Outside Counsel Contract--A contract for legal services between an Agency and Outside Counsel selected by the Agency that must be approved by the Office of the Attorney General pursuant to this chapter.
- (8) Request for Voucher Approval--A request made by an Agency to the Office of the Attorney General for the Office of the Attorney General to:
 - (A) review an Outside Counsel's Invoice; and
 - (B) to approve the payment of the Invoice, pursuant to this chapter.
- (9) Request to Retain Outside Counsel--A request made by an Agency to the Office of the Attorney General for approval to retain an Outside Counsel pursuant to this chapter.

(10) State Fiscal Biennium--Period of time running concurrent with that set by the General Appropriations Act.

§57.2.Application.

(a) This chapter does not constitute independent authority for any Agency to contract for legal services with Outside Counsel.

(b) This chapter does not apply to an Agency excluded by §402.0212(a) of the Government Code or an Agency granted an exemption by, and at the sole discretion of, the Office of the Attorney General.

(c) The Attorney General, First Assistant Attorney General, or their designee, as designated in writing, may waive or modify any provision or requirement contained in this chapter at their sole discretion. To be effective, any such waiver or modification must be in writing.

(d) The Office of the Attorney General, at its sole discretion, may grant exemptions from or modify the retention of Outside Counsel process and the Request for Voucher Approval process in certain instances. Such exemptions or modifications may be based on the type and subject matter of the Outside Counsel Contract at issue.

§57.3.Retention of Outside Counsel.

(a) The Attorney General serves as the State of Texas' legal counsel and the Office of the Attorney General therefore represents state agencies and institutions of higher education. Accordingly, Agencies may not retain or select any Outside Counsel without first receiving authorization and approval from the Office of the Attorney General to do so. The Office of the Attorney General will determine if retaining Outside Counsel is in the best interest of the State.

(b) An Agency requiring legal services from Outside Counsel must first submit a completed Request to Retain Outside Counsel form to the Office of the Attorney General. The form and instructions for submitting the form are available on the Office of the Attorney General's official website or upon request from the General Counsel Division of the Office of the Attorney General.

(c) No later than ten (10) business days of receipt of the Request to Retain Outside Counsel form, the Office of the Attorney General will notify the requesting Agency that:

(1) the Agency's request has been approved and it may proceed with the process of selecting Outside Counsel;

(2) the Agency's request has been denied; or

(3) the Agency must provide the Office of the Attorney General with additional information before a decision to approve or deny the request will be made.

(d) A notification under subsection (c)(1) of this section may include limitations and requirements on the selection and retention of Outside Counsel, including, but not limited to, the requirement that the requesting Agency use the Request for Qualification Process outlined in §57.4 of this chapter.

(e) A notification under subsection (c)(1) of this section does not constitute approval of an Outside Counsel Contract.

(f) Except as expressly allowed by a Texas statute, final decision by the Texas Supreme Court or a final judgment by a federal court, an Agency requiring legal services from Outside Counsel on a contingency fee arrangement must first seek the written approval of the Executive Director of the Legislative Budget Board, or their authorized designee, before submitting a Request to Retain Outside Counsel form pursuant to subsection (b) of this section. The Office of the Attorney General shall not approve an Agency's Request to Retain Outside Counsel, involving a contingency fee arrangement, until the Agency provides the Office of the Attorney General with the written approval of the Executive Director of the Legislative Budget Board, or their authorized designee.

§57.4. Request for Qualification Process.

(a) An Agency seeking to obtain legal services from Outside Counsel must publish a Request for Qualifications for Outside Counsel in the Texas State Business Daily for thirty (30) days.

(b) The Request for Qualifications for Outside Counsel publication must contain:

(1) a description of the legal services that the Outside Counsel will provide;

(2) the name and contact information for an Agency employee who should be contacted by an attorney or law firm that intends to submit their qualifications;

(3) the closing date for the receipt of qualifications;

(4) the procedure by which the Agency will make a selection of Outside Counsel;

(5) notice that the selection of and contracting with, Outside Counsel is subject to the approval of the Office of the Attorney General; and

(6) any other information the Agency deems necessary.

(c) After the closing date for the receipt of qualifications, the Agency may select an Outside Counsel. The Agency may only select an Outside Counsel that complied with the Request for Qualifications for Outside Counsel. The Agency shall make the selection of Outside Counsel:

(1) on the basis of demonstrated competence and qualifications to perform the legal services; and

(2) for a fair and reasonable price, which includes, but is not limited to, the hourly rates or fixed fee basis or fee schedule and expenses for legal services.

§57.5. Outside Counsel Contract.

(a) Except as authorized by law, an Outside Counsel Contract or any amendment to an Outside Counsel Contract must be approved by the Office of the Attorney General to be valid and enforceable.

(b) When entering into an Outside Counsel Contract, an Agency and Outside Counsel must use the Outside Counsel Contract template promulgated by the Office of the Attorney General. The contract template and instructions on submitting it are available on the Office of the Attorney General's official website or upon request from the General Counsel Division of the Office of the Attorney General.

(c) In the event of an inconsistency between this chapter and an executed Outside Counsel Contract, the contract shall prevail.

(d) Once an Agency selects an Outside Counsel, the Agency shall submit one copy of its proposed Outside Counsel Contract to the Office of the Attorney General for approval pursuant to this chapter. The Outside Counsel Contract must be signed by an authorized representative of the Outside Counsel and the chief administrator of the Agency, or authorized designee.

(e) Upon receipt of a proposed Outside Counsel Contract, the Office of the Attorney General will review the contract and either approve or reject it based upon the best interest of the State and compliance with state law.

(f) If the Office of the Attorney General approves a proposed Outside Counsel Contract, an authorized representative of the Office of the Attorney General will indicate that approval on the contract and return the signed copy to the Agency.

(g) If the Office of the Attorney General rejects a proposed Outside Counsel Contract, it will contact the submitting Agency to discuss the basis for the rejection and to explore whether revisions to the proposed contract could rectify the basis for the rejection. In the event the proposed contract is rejected and rectifying amendments are not acceptable or possible, the Office of the Attorney General will contact the submitting Agency to discuss alternatives to representation by the selected Outside Counsel.

§57.6. Invoices for Legal Services and Expenses.

(a) Outside Counsel shall prepare correct and complete Invoices and submit them, along with an Invoice Summary, for the billing period to the Agency for payment.

(b) A correct and complete Invoice must include, at a minimum, the following information:

(1) Outside Counsel Contract identification number;

- (2) Agency name;
 - (3) Outside Counsel name;
 - (4) Vendor Identification Number (assigned by the Texas Comptroller of Public Accounts), Social Security Number of an authorized representative of Outside Counsel or other appropriate payment identification number;
 - (5) Invoice number and date;
 - (6) Billing period of services rendered for which payment is being sought;
 - (7) Description and date of the task or service provided, the billable time for the task or service, the name and position (partner, associate, paralegal, etc.) of the timekeeper that performed the task or service, and the applicable hourly rate; or, if the fee is based on a fixed fee basis or fee schedule, the number and type of projects or matters;
 - (8) For filing charges, a description of the document filed and the name and location of the entity the document was filed with;
 - (9) For expenses, a copy of each receipt or other proof of payment; and
 - (10) Other information requested by the Agency or the Office of the Attorney General.
- (c) Unless requested to do so by the Agency or the Office of the Attorney General, Outside Counsel must not include information in its Invoices that is not related to compensable charges or reimbursable expenses.
- (d) Outside Counsel must verify, in writing, upon the submittal of each Invoice, that the Invoice is correct and complete and that: (1) the legal services being billed for were performed and were reasonable and either necessary or advisable;
- (2) the legal services being billed for were within the term and scope of services of the Outside Counsel Contract;
 - (3) the legal billing rates are the same as those set in the Outside Counsel Contract;
 - (4) any expense that requires the Agency's pre-approval was in fact pre-approved; and
 - (5) the total amount of the Invoice, along with all prior payments made to Outside Counsel under the Outside Counsel Contract, do not exceed the maximum liability amount set in the Outside Counsel Contract.

§57.7. Agency Review of Invoices.

(a) Upon receipt of an Invoice, the Agency shall immediately mark the Invoice with the date the Agency received the Invoice. The Agency must review the submitted Invoice, and any other information deemed necessary, to verify that: (1) the legal services contained in the Invoice were performed and were reasonable and either necessary or advisable;

(2) the legal services contained in the Invoice were performed within the term and scope of services of the Outside Counsel Contract;

(3) the legal billing rates are the same as those set in the Outside Counsel Contract;

(4) any expense that requires the Agency's pre-approval was in fact pre-approved; and

(5) the total amount of the Invoice, along with all prior payments made to Outside Counsel under the Outside Counsel Contract, do not exceed the maximum liability amount set in the Outside Counsel Contract.

(b) If the Agency determines that the submitted Invoice is correct and complete, and should be paid, the Agency's chief administrator or their designee must:

(1) approve the Invoice;

(2) verify that the requirements in subsection (a)(1) - (5) of this section have been met and attest to that verification with his or her signature;

(3) submit the Invoice and other required information to the Office of the Attorney General pursuant to §57.8(b) of this chapter; and

(4) if necessary, enter relevant information into the Uniform Statewide Accounting System.

(c) If the Agency determines that the Invoice is not correct and complete, and should not be paid, even in part, the Agency's designated representative must immediately notify Outside Counsel in writing that the Invoice is deficient and attempt to resolve the Invoice deficiency with Outside Counsel in a mutually agreeable manner.

(1) If the Invoice deficiency can be resolved in a reasonable time and in a mutually agreeable manner that results in a correct and complete Invoice, Outside Counsel should submit that Invoice to Agency for review and approval pursuant to §57.6 of this chapter.

(2) If the Invoice deficiency cannot be resolved in a reasonable time, the Agency should reject and deny payment for the disputed portions of the Invoice and approve the undisputed portions of the Invoice pursuant to subsection (b) of this section so that the undisputed portions of the Invoice can be processed for payment pursuant to this chapter. If necessary, Outside Counsel may resubmit the disputed and rejected portions of the Invoice to Agency once the deficiency is resolved in a mutually agreeable manner with Agency. In the event that Outside Counsel and Agency mutually agree on a resolution, then Outside Counsel must follow the steps in §57.6 of this chapter.

(d) Contingency Fee Outside Counsel may be required to submit Invoices for review as requested by the Office of the Attorney General.

§57.8. Agency Submission of Request for Voucher Approval to the Office of the Attorney General.

- (a) An Invoice may not be paid without the prior approval of the Office of the Attorney General.
- (b) If the Agency approves an Invoice, or a portion of an Invoice, pursuant to §57.7(b) of this chapter, the Agency must submit the following information to the Office of the Attorney General within ten (10) business days of receiving the Invoice from Outside Counsel:
 - (1) a Request for Voucher Approval;
 - (2) a copy of the Invoice and Invoice Summary at issue;
 - (3) evidence of the date the Agency received the Invoice;
 - (4) a copy of the verification required by §57.7(b)(2) of this chapter;
 - (5) other information requested by the Office of the Attorney General;
 - (6) any other information the Agency deems necessary for the Office of the Attorney General to conduct a review of the Invoice; and
 - (7) if necessary, a description of any disputed charge that the Agency has not approved for payment and the reason(s) why it was not approved.
- (c) If the Office of the Attorney General determines that a properly submitted Invoice, or a portion thereof, is eligible for payment, it will provide the Agency with a voucher approval and, if necessary, enter relevant information in the Uniform Statewide Accounting System.
- (d) If the Office of the Attorney General determines that any portion of an Invoice is not eligible for payment, it will immediately notify the Agency of that decision. The Agency may then, after consulting with Outside Counsel:
 - (1) abide by the Office of the Attorney General's determination to deny payment;
 - (2) inform the Office of the Attorney General that the Agency and the Outside Counsel agree that the payment should be denied and the Invoice will be withdrawn; or
 - (3) submit a new Invoice for review and approval after resolving the Invoice deficiency with Outside Counsel in a mutually agreeable manner.
- (e) The Office of the Attorney General will not approve payment of an Invoice in an amount that is greater than the amount approved by the Agency under §57.7(b) of this chapter.

(f) The Office of the Attorney General, at its sole discretion, may permit Agencies to submit information other than the information specified in subsection (b)(1) - (7) of this section before the Office of the Attorney General approves or disapproves payment of an Invoice. The Office of the Attorney General will specify what information is acceptable for an Agency to submit under this subsection.

(g) Except as allowed by the Office of the Attorney General, Agencies may submit only one Request for Voucher Approval per billing period per contract.

§57.9. Administrative Fee.

(a) Outside Counsel must pay a non-refundable administrative fee to the Office of the Attorney General for the Invoice review described in §57.8 of this chapter. Outside Counsel may not charge, or seek reimbursement from, the Agency for payment of this administrative fee.

(b) The administrative fee described in subsection (a) of this section is incurred on the date that the first Invoice after the effective date of this chapter is submitted to the Agency. Any Invoice submitted to the Office of the Attorney General by the Agency before the administrative fee has been submitted by the Outside Counsel to the Office of the Attorney General shall be deemed incorrect and incomplete and not eligible for payment.

(c) The administrative fee is set as follows:

(1) For an Outside Counsel Contract with a maximum liability of less than \$2,000.00, but more than \$0.00, the administrative fee is \$100.00.

(2) For an Outside Counsel Contract with a maximum liability equal to or greater than \$2,000.00 but less than \$10,000.00, the administrative fee is \$200.00.

(3) For an Outside Counsel Contract with a maximum liability equal to or greater than \$10,000.00 but less than \$50,000.00, the administrative fee is \$500.00.

(4) For an Outside Counsel Contract with a maximum liability equal to or greater than \$50,000.00 but less than \$150,000.00, the administrative fee is \$1,000.00.

(5) For an Outside Counsel Contract with a maximum liability equal to or greater than \$150,000.00 but less than \$1,000,000.00, the administrative fee is \$1,500.00.

(6) For an Outside Counsel Contract with a maximum liability of equal to or greater than \$1,000,000.00, the administrative fee is \$2,000.00.

(7) For Contingency Fee Outside Counsel Contracts, the Office of the Attorney General will establish a reasonable administrative fee when Invoices are submitted to the Office of the Attorney General for review.

(d) The administrative fee due under subsection (c) of this section covers the then current State Fiscal Biennium in an Outside Counsel Contract term. Outside Counsel must pay a non-refundable administrative fee to the Office of the Attorney General, as set by subsection (c) of this section, for every State Fiscal Biennium covered in an Outside Counsel Contract term. Subsequent biennial administrative fees are due upon submission of the first Invoice of a new State Fiscal Biennium.

(e) The administrative fee described in subsection (a) of this section is not due for a contract having a zero dollar liability or a contract that is only seeking reimbursement for expenses.

(f) For exceptional circumstances, the Office of the Attorney General, at its sole discretion, may modify the amount of the administrative fee due under subsection (c) of this section. If the Office of the Attorney General, at its sole discretion, permits an Agency to submit information other than the information specified in §57.8(b)(1) - (7) of this chapter, the Office of the Attorney General, in its sole discretion, may reduce or waive the administrative fee.

(g) When an Outside Counsel Contract is amended to increase the maximum liability of the contract to an amount that requires Outside Counsel to pay a higher administrative fee, under subsection (c) of this section, then Outside Counsel shall pay the difference between the original lesser fee, if already paid, and the new higher fee upon submission of the next submitted Invoice.

(h) The administrative fee described in subsection (a) of this section shall be sent to the Office of the Attorney General and not to the Agency.

Attachment B

New Request to Retain Outside Counsel Form

REQUEST TO RETAIN OUTSIDE COUNSEL
Title 1, Chapter 57 of the Texas Administrative Code

Requesting Agency _____
Contact Person _____
Mailing Address _____
Phone Number _____ **Email** _____

1. Describe the legal services that the Outside Counsel would provide. The description of legal services provided herein will be used as the "Scope of Services" in the outside counsel contract.
2. If the legal services described above include litigation legal services, describe what the litigation is and in what jurisdiction it will occur.
3. Is this a contingency fee contract? If yes, attach the written approval of the LBB or cite to the statutory exemption.
4. Has the Agency discussed the possibility of the OAG providing the legal services? If so, give the names of the person(s) at the OAG that were contacted, the dates of contact(s) and a summary of discussions. Please provide any copies of relevant correspondence exchanged between the Agency and the OAG.
5. What is the anticipated total cost for both legal services to be provided, and related expenses to be incurred, by Outside Counsel?
6. List the source(s) of all funds that will be used to pay for the legal services and expenses under this contract? Examples of sources include the General Appropriations Act, grant funds, trust funds, local funds, etc.
7. What is the anticipated start date and end date of the outside counsel contract?
8. If an RFQ has already been posted and an outside counsel has been identified by the Agency, please list the date the RFQ was posted and the name, address and telephone number of the identified outside counsel.

OR

If an RFQ has not been published, please indicate when the Agency anticipates publishing a RFQ.

OR

If the Agency is seeking an exemption from the RFQ process requirements, provide a justification.

9. If an existing or expired outside counsel contract is or was in place for these or similar services, please provide:
 - The name of the outside counsel and the outside counsel contract number; and
 - The date and location where the RFQ (or RFI/RFP) was published.

Attachment C

New Outside Counsel Contract Template

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

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

INDUCEMENTS

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

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

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

AGREEMENT

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

Section 1. Purpose/OAG Approval.

1.1 Purpose. The purpose of this OCC is for Outside Counsel to provide legal services to Agency, as described in Addendum A. Outside Counsel and Agency understand and agree to the OAG's continuing authority and right to expand or limit the scope of legal services provided by Outside Counsel to Agency.

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

1.2.1 Litigation. OUTSIDE COUNSEL SHALL NOT REPRESENT AGENCY IN ANY LITIGATION UNLESS ADDENDUM A SPECIFICALLY AUTHORIZES LITIGATION IN A PARTICULAR MATTER. If Addendum A does not specifically authorize Outside Counsel's representation of Agency in a particular litigation matter and the Agency requires such representation, then the Agency must request litigation authority from the OAG and submit a

new Outside Counsel Contract to the OAG for approval before filing or responding to litigation matters.

1.2.2 Appellate Matters. Irrespective of any authorization to engage in litigation in this OCC, or in a writing outside of this OCC, OUTSIDE COUNSEL IS NOT AUTHORIZED TO PROCEED ON ANY APPEAL, IN ANY CAPACITY, WHETHER INTERLOCUTORY OR OTHERWISE, WHETHER AS APPELLANT, APPELLEE, RESPONDENT, APPLICANT, OR OTHERWISE, WITHOUT FIRST OBTAINING THE WRITTEN PERMISSION OF THE ATTORNEY GENERAL, FIRST ASSISTANT ATTORNEY GENERAL, OR SOLICITOR GENERAL. Outside Counsel has the duty to promptly notify the Agency and OAG of the desirability or likelihood of an appeal.

1.2.3 OAG Review of Outside Counsel Invoice and Release of Payment. In addition to OAG approval to contract for legal services, Outside Counsel invoices must be reviewed and approved by the OAG pursuant to Subsection 402.0212(b) of the Texas Government Code and Title 1, Chapter 57 of the Texas Administrative Code.

Section 2. OCC Term.

This OCC shall commence on [_____], and shall terminate on [_____] (hereinafter "OCC Term"), unless terminated earlier pursuant to section 7 of this OCC. The OCC Term may not be extended except by amendment pursuant to section 9.12 of this OCC.

Section 3. Obligations of Outside Counsel.

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

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

3.3 Public Information and Client Communications. Outside Counsel acknowledges that information generated 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. Outside Counsel will exercise professional judgment and care when creating documents or other media intended to be confidential or privileged attorney-client communications that may be subject to disclosure under the Public Information Act (e.g. invoices where incidental notation may tend to reveal litigation strategies or privileged information). Outside Counsel should mark confidential or privileged attorney-client communications as confidential. This subsection shall not be

interpreted to limit Outside Counsel's duty to provide full disclosure to Agency and the OAG as necessary in Outside Counsel's judgment to represent Agency with due professional care or as required by applicable law or disciplinary rules.

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

3.5 Subcontracting Authority. In the event that Outside Counsel should determine that it is necessary or expedient to subcontract for any of the performances herein, or in support of any of those performances, Outside Counsel may enter into such subcontract(s). If Outside Counsel elects to enter into a subcontract, then the Parties agree that all such subcontracts are subject to section 4 (Limitation of Liability), subsection 5.2 (Reimbursement of Expenses), subsection 5.3 (Subcontractor Payments), subsection 6.2 (Subcontractor Invoices), and subsection 6.5 (Supporting Documents; Right-to-Audit; Inspection of Records) of this OCC. Furthermore, if Outside Counsel elects to enter into a subcontract for any legal services, then the Parties agree that the Agency shall not be liable to Outside Counsel for any hourly rates or rate ranges greater than the highest hourly rate or rate range specified in Addendum B unless prior written approval is obtained from the Agency and OAG. Any subcontracted legal counsel must comply with subsection 9.8 (Conflict of Interest) of this OCC.

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

In no event shall this section or any other provision of this OCC be construed as relieving Outside Counsel of the responsibility for ensuring that all performances rendered under this OCC, and any subcontracts thereto, are rendered in compliance with all of the terms of this OCC.

Section 4. Liability.

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

 \$ for this OCC Term.

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

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

Section 5. Compensation/Expenses.

5.1 Fees to Outside Counsel. Subject to Title 1, Chapter 57 of the Texas Administrative Code, Agency agrees to pay Outside Counsel in consideration of full and satisfactory performance of the legal services under this OCC. Outside Counsel agrees to the following fee schedule, subject to the limitations described in this OCC (see Addendum B for additional terms and conditions regarding fees/compensation to Outside Counsel).

5.2 Reimbursement of Expenses. Agency will reimburse Outside Counsel for actual expenses incurred in the performance of the legal services described in Addendum A, if such expenses are reasonable and either necessary or advisable. Outside Counsel must provide copies of original receipts as evidence of actual expenditures. Limitations on the amount and type of reimbursement include:

5.2.1 Mileage. Agency will reimburse Outside Counsel for reasonable and necessary travel mileage at the per mile rate posted on the Texas Mileage Guide adopted under Section 660.043 of the Texas Government Code. The Texas Mileage Guide is currently available on the Comptroller of Public Accounts' website, at: <https://fm.xcpa.state.tx.us/fm/travel/travelrates.php> (last visited April 2, 2012).

5.2.2 Meals. Agency will reimburse Outside Counsel for reasonable and necessary meal expenses at the rate of [\$_____] or actual expenses, whichever is less, for each attorney for each day requiring overnight travel. Agency will not reimburse Outside Counsel for the purchase of alcohol.

5.2.3 Lodging. Agency will reimburse Outside Counsel for reasonable and necessary lodging expenses. Unless otherwise agreed upon by Agency in writing in advance, in-state lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$200.00 per night. Unless otherwise agreed upon by Agency in writing in advance, out-of-state lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$250.00 per night.

5.2.4 Airfare. Airfare will be reimbursed at the lesser amount of the actual expense or the regular published rates for coach fares for commercial airlines.

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 expenses and disbursements as part of overhead and, therefore, part of a basic hourly rate or flat rate. Therefore, Agency will not reimburse Outside Counsel for: copying charges (routine, day-to-day); 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.

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

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

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

5.3 Subcontractor Payments. 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 Extensive Legal Research. In general, Agency should be paying Outside Counsel to apply their knowledge and expertise for which it was hired, not paying Outside Counsel to obtain that knowledge. However, Agency understands that situations arise that justify extensive research on how best to proceed in order to achieve a desired result. The need for extensive legal research will be addressed on a case-by-case basis by Outside Counsel and Agency.

5.5 Administrative Staff/Clerks. Agency will not pay for law clerks, law interns, summer interns, or administrative staff, such as secretarial support, librarians, case clerks, and accounting and billing clerks, including but not limited to the following: overtime, file opening, file organization, docketing, and other administrative tasks; and preparation of billing, invoice review, budget preparation, and communications regarding same or any other accounting matter.

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

Section 6. Invoices for Payment.

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

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

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

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

Agency Contact Name
Title
Agency Name
Address
City, State Zip

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

OCCInvoice@texasattorneygeneral.gov

OR

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

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

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

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

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

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

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

6.5 Supporting Documents; Right-to-Audit; Inspection of Records.

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

6.5.2 Records Retention. Outside Counsel shall retain, for a period of at least four (4) years after the later of (1) the expiration or termination of this OCC, (2) an audit relating to this OCC, or (3) litigation relating to this OCC, such records as are necessary to fully disclose the extent of services provided under this OCC, including but not limited to any daily activity reports and time distribution and attendance records, and other records that may show the basis of the charges made or performances delivered.

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

6.5.4 State Auditor. In addition to and without limitation on the other audit provisions of this OCC, pursuant to Section 2262.003 of the Texas Government Code, the State Auditor's

Office may conduct an audit or investigation of Outside Counsel or any other entity or person receiving funds from the State directly under this OCC or indirectly through a subcontract under this OCC. The acceptance of funds by Outside Counsel or any other entity or person directly under this OCC or indirectly through a subcontract under this OCC acts as acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, Outside Counsel or other entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. Outside Counsel further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Outside Counsel shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Outside Counsel and the requirement to cooperate is included in any subcontract it awards. The State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Outside Counsel related to this OCC.

Section 7. Termination

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

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

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

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

7.4 Remedies. Notwithstanding any exercise by Agency of its rights of early termination, Outside Counsel shall not be relieved of any liability to Agency for damages due to Agency by virtue of any breach of this OCC by Outside Counsel or for amounts otherwise due Agency by Outside Counsel.

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

Section 8. Certifications of Outside Counsel

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

8.1 Delinquent Child Support Obligations. Outside Counsel certifies that it is not ineligible to receive any grant, loan, or payment under this OCC pursuant to Section 231.006 of the Texas Family Code and acknowledges that this OCC may be terminated and payment may be withheld if this certification is inaccurate.

8.2 Buy Texas. With respect to any services purchased pursuant to this OCC, Outside Counsel represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials. This subsection does not apply to Outside Counsel providing legal services located outside the State of Texas.

8.3 Gift to Public Servant. Outside Counsel warrants that it has not given, nor does it intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this OCC.

8.4 Franchise Tax. By signing this OCC, Outside Counsel certifies that its Texas franchise tax payments are current, or that it is exempt from or not subject to such tax, consistent with Chapter 171 of the Texas Tax Code.

8.5 Outside Counsel License/Conduct. Outside Counsel certifies that each attorney performing services under this OCC is an attorney in good standing under the laws of the State of Texas or the jurisdiction where the representation occurs. Outside Counsel will notify Agency and the OAG in writing within one business day of any lapse in an assigned attorney's licensed status or any final disciplinary action taken against an assigned attorney. For the Lead Counsel(s) named in Addendum B, Outside Counsel will provide documentation of good standing from the state bar or the licensing authority of the jurisdiction in which the attorney resides and is licensed. An attorney that is not licensed by the State Bar of Texas may not provide legal services and advice concerning Texas law.

8.6 Debt to State. Outside Counsel acknowledges and agrees that, to the extent Outside Counsel owes any debt (child support or other obligation) or delinquent taxes to the State of Texas, any payments Outside Counsel are owed under this OCC may be applied by the Comptroller of Public Accounts toward any such debt or delinquent taxes until such debt or delinquent taxes are paid in full.

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

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

SECTION 9. GENERAL TERMS AND CONDITIONS

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

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

9.1.2 Outside Counsel agrees and acknowledges that during the OCC Term, Outside Counsel shall be entirely responsible for the liability and payment for Outside Counsel or Outside Counsel's employees or assistants, of all taxes of whatever kind, arising out of the performances in this OCC. Other than the payments described in this OCC, Outside Counsel agrees and acknowledges that Outside Counsel or Outside Counsel's employees or assistants shall not be entitled to any State benefit on account of the services provided hereunder. AGENCY SHALL NOT BE LIABLE TO OUTSIDE COUNSEL, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION, OR ANY BENEFIT DUE TO A STATE EMPLOYEE. If Agency or the State of Texas shall nonetheless become liable for such payments or obligations, Outside Counsel shall promptly pay or reimburse Agency or the State of Texas for such liability or obligation.

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

9.3 Survival. The obligations of Outside Counsel under the following sections and subsections shall survive the termination or expiration of this OCC: 3.3, 4, 5, 6.5, 7.1, 7.3, 7.4, 9.7, 9.8, 9.11, and 9.13.

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

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

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

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

[Outside Counsel Name and Address]

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

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

[Agency Contact Name]

[Title]

[Agency Name]

[Street Address]

[City, State, Zip]

9.7 Dispute Resolution.

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

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

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

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

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

9.8 Conflict of Interest.

9.8.1 Funds appropriated by the General Appropriations Act may not be expended to pay the legal fees or expenses of Outside Counsel in representing Agency in a contested matter if Outside Counsel is representing a plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies. *See* General Appropriations Act, art. IX, sec. 16.01(j). For these purposes, "proceedings seeking monetary damages" do not include actions for tax refunds, compensation for exercise of eminent domain authority, or reimbursement of costs of litigation and attorney's fees.

9.8.2 Funds appropriated by the General Appropriations Act may not be used to pay the legal fees or expenses of Outside Counsel under this OCC if Outside Counsel currently represents, has represented in the six months preceding this OCC, or will represent in the six months following the termination of this OCC, a client before the Agency. See General Appropriations Act, art. IX, sec. 16.01(a)(4).

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

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

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

9.11 Applicable Law and Venue. This OCC is made and entered into in the State of Texas, and this OCC and all disputes arising out of or relating to this OCC shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

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

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

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

purpose of this OCC. Any ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of this OCC.

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

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

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

[Firm Name]

[Agency]

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

[Authorized Signatory]
[Title]
[Agency Name]

Approved:

By the Office of the Attorney General of Texas

Attorney General or Designee

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

Addendum A

Services

Description of Legal Services to be provided:

[Description]

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

Addendum B

Rates

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

Name(s) of Lead Counsel:

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

Named Individual or Timekeeper Classification

Hourly Rate or Rate Range

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

Other (describe)

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

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

Attachment D

New Request for Voucher Approval Form

REQUEST FOR VOUCHER APPROVAL
 Submit this to: OCCInvoice@texasattorneygeneral.gov

AGENCY/UNIVERSITY _____
 OUTSIDE COUNSEL (Law Firm) _____
 OAG Contract No. _____ Contract Term _____
 Contract Cap Amount _____

AMOUNTS REQUESTED

Date Agency Received Correct and Complete Invoice _____
 Invoice Number(s) _____
 Billing Period of Services _____
 How much, if any, will be paid with funds not appropriated to the agency from the General Appropriations Act? _____

Legal Fees (per timekeeper). Attach an extra page if more than 6 timekeepers are reported.

Initials of Timekeeper & Job Title	Hours Worked	Hourly Rate	Total Dollars-Per Timekeeper
1.			
2.			
3.			
4.			
5.			
6.			
TOTAL AMOUNT of all LEGAL FEES	n/a	n/a	

OR – If Legal Fees Are Set By A Fixed Fee.

Type of Project/Matter	Number of Project/Matter	Total Dollars – Per Project/Matter
1.		
2.		

TOTAL AMOUNT of all EXPENSES _____

TOTAL AMOUNT (All Legal Fees and Expenses) Requested _____

EXCLUDING THIS VOUCHER APPROVAL, TOTAL AMOUNT of all Legal Fees and Expenses, PAID TO DATE (All Legal Fees and Expenses) _____

AGENCY VERIFICATION -The Chief Administrative Officer of the Agency or Designee hereby certifies that:

- (1) The legal services contained in the Invoice were performed and were reasonable and either necessary or advisable;
- (2) The legal services contained in the Invoice were performed within the term and scope of services of the Outside Counsel Contract;
- (3) The legal billing rates are the same as those set in the Outside Counsel Contract;
- (4) Any expense that requires the Agency's pre-approval was in fact pre-approved; and
- (5) The total amount of the Invoice, along with all prior payments made to Outside Counsel under the Outside Counsel Contract do not exceed the maximum liability amount as set in the Outside Counsel Contract.

Name & Title _____

Date _____

Email Address _____

OAG INTERNAL USE ONLY

Approval to Pay: _____ Initials: _____
 Comments: _____

Attachment E

Amendment Templates

AMENDMENT TO OUTSIDE COUNSEL CONTRACT

OCC No. _____

WHEREAS, the [AGENCY] and [OUTSIDE COUNSEL] wish to amend Section(s) ___ of the Outside Counsel Contract by [describe amendment].

IT IS UNDERSTOOD AND AGREED AS FOLLOWS:

Section ___ of the Outside Counsel Contract is amended to _____.

The Outside Counsel Contract in all other respects is ratified and confirmed.

AGENCY

OUTSIDE COUNSEL

[Authorized Signatory]

[Title]

[Agency Name]

[Authorized Signatory]

[Title]

[Firm Name]

Date: _____

Date: _____

APPROVED:

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OR DESIGNEE

AMENDMENT TO OUTSIDE COUNSEL CONTRACT
OAG CONTRACT NO. _____

THIS CONTRACT AMENDMENT is made and entered into by and between the _____, hereinafter referred to as "Agency," and _____, hereinafter referred to as "Outside Counsel." The parties hereto severally and collectively have agreed and by the execution hereof are bound to the mutual obligations and performance of the tasks hereinafter described.

INDUCEMENTS

Whereas, the Agency and the Outside Counsel agreed to and executed that certain Outside Counsel Contract identified by the Outside Counsel Contract Number referenced above, hereinafter the "Original Contract."

Whereas, the Agency and the Outside Counsel desire to amend and or modify, alter, excise or add certain terms, conditions and/or mutual covenants of the Original Contract as set forth hereinafter.

Whereas, the Agency and the Outside Counsel intend to create a new contract consisting of the new amended and or modified, altered, excised or added terms, conditions and/or mutual covenants of this Amendment to the Outside Counsel Contract and the remaining unchanged provisions of the Original Contract.

NOW, THEREFORE, in consideration of the inducements, mutual covenants and conditions herein contained, the parties agree as follows:

SECTION 1. MODIFICATIONS/AMENDMENTS

[The amended section, subsection or Addendum should be completely restated]

SECTION 2. ENTIRE AGREEMENT

The entire agreement between the Agency and the Outside Counsel consists of the new amended and or modified, altered, excised or added terms, conditions and/or mutual covenants of this Amendment to the Outside Counsel Contract and the remaining unchanged provisions of the Original Contract. No prior agreement or understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in this contract.

In Witness Whereof, the Parties Have Signed and Executed this Contract.

AGENCY

OUTSIDE COUNSEL

[Authorized Signatory]

[Title]

[Agency Name]

[Authorized Signatory]

[Title]

[Firm Name]

Date: _____

Date: _____

APPROVED:

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OR DESIGNEE