TEXAS FACILITIES COMMISSION

P. O. Box 13047
Austin, Texas 78711-3047

REQUEST FOR QUALIFICATIONS
OUTSIDE COUNSEL
CONSTRUCTION SERVICES

RFQ #303-6-00039

Posting Date: Monday July 13, 2015

Submittal Deadline: Monday, August 17, 2015, 3:00PM

Rev. 2-2-2015

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TEXAS FACILITIES COMMISSION
REQUEST FOR QUALIFICATIONS #303-6-XXXXX
Outside Counsel

The Texas Facilities Commission (hereinafter referred to as "TFC" or "Commission" is the state agency charged by statute with charge and control of state buildings, grounds and property, maintenance or repair of state buildings, grounds, property and for construction of state buildings. The Commission has its headquarters in Austin, Texas. The scope of legal services to be provided to the Commission is in the following areas: legal advice, counsel and legal services including, but not limited to those areas identified in Section 1.2 below. The Office of the Attorney General (hereinafter referred to as "OAG") shall approve Outside Counsel as legal counsel to the Commission during the term of the Contract and for the purposes expressed in this Request For Qualifications.

SECTION I. GENERAL.

1.1 **AUTHORITY.** This Request for Qualifications No. 303-6-00039 (hereinafter referred to as the "RFQ") is issued in accordance with the provisions of Texas Government Code Chapters 402, Subchapter B and Chapter 2254, Subchapter D, *Outside Counsel Legal Services*.

1.2. **SCOPE OF SEVICES**. The Commission issues this RFQ inviting interested vendors to submit their Statement of Qualifications, pursuant to Section II, *Statement of Qualifications* below, primarily for construction contracting and real property legal services as further described in Outside Counsel Contract, Addendum A, *Services* attached to this RFQ as Exhibit A. Respondents shall provide information, evidence and demonstrations that will permit awarding a contract in a manner that provides the best value to the Commission. The Commission requires the assistance of outside legal counsel in carrying out its responsibilities regarding the construction of new state buildings and associated utility infrastructure. Respondents wishing to act as outside legal counsel to the Agency, subject to the authority of the OAG pursuant to Texas Government Code, Section 402.0212, and otherwise able to meet the terms of this RFQ, are invited to submit a Statement of Qualifications. Respondents must provide both general contract, construction and real property legal services and, if necessary, though not contemplated at this time, construction litigation services. Upon selection of the "Successful Respondent" and the negotiation of cost, TFC will seek the approval of the OAG to enter into an Outside Counsel Contract (hereinafter referred to as the "Contract") attached as Exhibit A. A sample of the OAG's Amendment to Outside Counsel Contract is attached to this RFQ as Exhibit B. Both OAG forms must be used by TFC and may not be amended without the written approval of the OAG.

The Commission is a part of the Executive Branch of Texas State Government. The Commission will not relinquish control over all it operations. The Successful Respondent shall function under the supervision of the Commission. The Successful Respondent will be subject to the same scrutiny and oversight that would apply if all work were performed by Commission employees. Accordingly, all work must be conducted in adherence to applicable statutes and the highest ethical standards. All Respondents should read and be familiar with the Chapters 2166 and 2269 of the Texas Government Code and the State of Texas Uniform General Conditions for Construction Contracts.

1.3. **CONTRACT TERM**. It is the intention of the Commission to award a contract commencing as of the date of execution and continuing for an initial term through August 31, 2017. Subject to approval by the Office of the Attorney General (OAG), one (1) two (2) year option to renew, may be sought, if necessary. Subject to on-going OAG approval, the option to renew will be at the sole and absolute discretion of TFC.

1.4. **NO GUARANTEE OF VOLUME OR USAGE.** The Commission makes no guarantee of volume or usage under any contract resulting from this RFQ.

1.5. **FEES.** (a) Cost will be negotiated with the Successful Respondent after evaluation is completed and the Successful Respondent is named (hereinafter referred to as "Outside Counsel"). For informational purposes, unless expressly approved by the First Assistant Attorney General of the OAG in advance, hourly rates for attorneys shall not exceed Five Hundred Twenty Five and No/100 Dollars ($525.00), and hourly rates for paralegals shall not exceed Two Hundred Twenty Five and No/100 Dollars ($225.00). Outside Counsel may not bill for administrative staff, law clerks, or interns.

(b) Outside Counsel must pay a non-refundable administrative fee to the Office of the Attorney General for invoice review pursuant to Subsection 402.0212(c) of the Texas Government Code and Title 1, Part 3 Texas Administrative Code Section 57.9. Outside Counsel may not charge or seek reimbursement from the Commission for the payment of the administrative fee. 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. 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.* The OAG has granted an limited exemption from to the administrative fee and invoice review to university systems and institutions of higher education regarding certain outside counsel that provide legal services under an OAG approved outside counsel contract that is solely related to the filing, management, and/or enforcement of system or institution patents, trademarks, and/or copyrights. More information on the limited exemption is found on the OAG's website.

(c) 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
	$200.00
	$500.00
	$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 Outside Counsel Contract Number.

1.6. **SCHEDULE OF EVENTS**. TFC reserves the right to alter the dates as shown below.

EVENT	DATE	
Issue RFQ	7/13/2015	
Deadline for Submission of Questions	7/20/2015	5:00PM Central Time
Deadline for Submission of Qualifications & HSP	8/17/2015	3:00 PM Central Time

SECTION II. STATEMENT OF QUALIFICATIONS AND SUBMITTALS.

2.1. **REQUIREMENTS.** Responses to this RFQ shall include at least the following information. Respondents shall submit one (1) original and define (4) copies of the submittal. Additionally, Respondent shall provide a CD containing a complete copy of Respondent's response to this RFQ. The format shall be Adobe Acrobat version 9.0 or higher. Pages should be numbered and contain an organized, paginated table of contents corresponding to the section and pages of the submittal.

(a) Respondent shall submit general firm Information, including, but not limited to the following:

(i) firm description;

(ii) physical and mailing address;

(iii) primary contact;

(iv) office and mobile telephone number and email of primary contact; and,

(v) 11-Digit State of Texas Taxpayer Vendor Identification Number.

(b) Respondent shall provide the following information regarding its experience and qualifications:

i a description of the firm's or attorney's qualifications for performing the legal services requested in the RFQ, including the firm's prior experience administrative, contract, construction, environmental and real property law;

ii the names and expertise, including scientific or technical, of the attorneys that would be assigned to work on such matters, and the availability of the lead attorney and others assigned to the project;

iii the submission of fee information in the form of a range of hourly rates for each billing class of personnel who may be assigned to perform services for TFC;

iv a description of the efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and the specific areas of law in particular;

v confirmation that the firm and its attorneys are not the subject of a criminal investigation;

vi confirmation of willingness to comply with policies, directives, and guidelines of TFC and the Attorney General of the State of Texas; and

vii three (3) client references from clients for whom legal work has been performed in the last three years. These references may be contacted and used in the evaluation of the responses. If legal services have been provided to government entities within the last three (3) years. The client reference list must include:

(A) name and address of client;

(B) name, title, e-mail address and telephone number of client contact; and

(C) description of legal services provided and the length of time legal services have been provided to that client.

The Commission reserves the right to contact individuals and organizations that have had dealings with the Respondent whether or not identified as a reference in the Response.

2.2. **LAW LICENSE.** As required by the Outside Counsel Contract, Exhibit A, Outside Counsel shall certify that each attorney performing services under the contract is an attorney in good standing under the laws of the State of Texas or the jurisdiction where the representation occurs. Outside Counsel providing legal advice involving the interpretation or application of Texas law must be licensed as an active attorney in good standing with the State Bar of Texas. Outside Counsel will agree to notify the Commission and the Office of the Attorney General in writing within one (1) 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 of the Outside Counsel Contract, 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.

2.3. **ATTACHMENT A, HUB SUBCONTRACTING PLAN & HUB VENDOR LIST.** (a) In accordance with the Texas Government Code, Sections 2161.181-182 and Title 34, Chapter 20, Subchapter B, Sections 20.10- 20.28 of the Texas Administrative Code (TAC), TFC shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction services, including professional and consulting services; and commodities contracts. The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the following HUB utilization goals as specified in 34 TAC § 20.13:

(i) 11.2% for heavy construction other than building contracts;

(ii) 21.1% for all building construction;

(iii) 32.9% for all special trade construction contracts;

(iv) 23.7% for professional services contracts;

(v) 26.0% for all other services contracts; and,

(vi) 21.1% for commodities contracts.

(b) As mandated by Section 20.14, Respondents must submit an Attachment A, HUB Subcontracting Plan that identifies all subcontracting items and complies with good faith effort

requirements outlined in Attachment A, HUB Subcontracting Plan. Pursuant to Section 2161.252(B) of the Texas Government Code, TFC shall reject any response that does not include a fully completed Attachment A, HUB Subcontracting Plan. An incomplete Attachment A, HUB Subcontracting Plan is considered a material failure to comply with the solicitation requirements.

(c) The Attachment A, HUB Subcontracting Plan shall become a provision of the Contract. Outside Counsel can only change the Attachment A, HUB Subcontracting Plan if: (a) Outside Counsel complies with Title 34, Chapter 20, Subchapter C, Section 20.14; (b) Outside Counsel provides its proposed changes to TFC for review and TFC approves the proposed changes.

(d) If TFC determines that the Respondent failed to implement the HUB subcontracting plan in good faith, TFC, in addition to any other remedies, may report nonperformance to the Texas Comptroller in accordance with 34 TAC, Section 20.14, (g) (5).

(e) If further assistance is needed in preparing the Attachment A, HUB Subcontracting Plan, potential respondents may contact Dinita Caldwell at (512) 475-0453, or by email at hub@tfc.state.tx.us .

2.4. **ATTACHMENT B, EXECUTION OF SUBMITTAL.** Failure to sign and return the Attachment B, Execution of Submittal shall result in rejection of a response.

2.5. **DISCLOSURE STATEMENT REGARDING CONFLICTS OF INTEREST.** On May 30, 2014, the OAG adopted rules regarding conflict disclosures required by firms selected to serve state agencies. The new rules provide that state agencies such as TFC shall require the law firm to submit a written disclosure statement identifying 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 adverse 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. The disclosure statement must 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.

2.6. **RECEIPT OF ADDENDA.** Addenda to this RFQ should be acknowledged by returning a signed copy of each addendum signature page with the response. Any amendment to this procurement solicitation will be posted as an addendum on the Electronic State Business Daily (ESBF). It is the responsibility of interested parties to periodically check the ESBD for updates to the solicitation prior to solicitation submittal. Respondent's failure to periodically check the ESBD) will in no way release the Selected Respondent from "addenda or additional information" resulting in additional costs to meet the requirements of the RFQ.

2.7. **SUBMISSION DEADLINES AND RESTRICTIONS.** (a) Submittals shall be received at TFC by 3:00 PM Central Time on August 4, 2015, per Section 1.6, *Schedule of Events*. TFC reserves the right to accept late submittals, however, no submittals shall be accepted once the submittal opening process has begun.

(b) TFC will not consider any submittal that bears a copyright. As a state agency, TFC will strictly adhere to the requirements of Chapter 552 of the Texas Government Code (the "Texas Public Information Act") regarding the disclosure of public information. As a result, by participating in this solicitation process Respondent acknowledges that all information, documentation, and other materials submitted in response to this solicitation may be subject to public disclosure under the Texas Public Information Act. TFC does not have authority to agree that any information submitted will not be subject to disclosure. Disclosure is governed by the Texas Public Information Act. Respondents are advised to consult with their legal counsel concerning disclosure issues resulting from this process and to take

precautions to safeguard trade secrets and proprietary or otherwise confidential information. TFC assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Respondents. If it is necessary for Respondent to include trade secrets or proprietary or otherwise confidential information in its submittal, Respondent must clearly mark in bold red letters the term "**CONFIDENTIAL**" using at least **14 point font,** on that specific part or page of the submittal which Respondent believes to be confidential. All submittals and parts of submittals that are not marked confidential will be automatically considered to be public information. If TFC receives a public information request seeking information marked by Respondent as confidential, Respondent will receive notice of the request as required by the Texas Public Information Act. If TFC receives a public information request for submittals and parts of submittals that are not marked confidential, the information will be disclosed to the public as required by the Texas Public Information Act.

2.8 **DELIVERY OF SUBMITTALS.** Submittals shall be delivered to TFC by one of the following methods:

U. S. Postal Service	Overnight/Express Mail	Hand Deliver
TFC – Bid Services **Attn: Richard Ehlert** **RFQ #303-6-00039** Central Services Building P.O. Box 13047 Austin, TX 78711-3047	TFC – Bid Services **Attn: Richard Ehlert** **RFQ #303-6-00039** Parking Garage R Warehouse 1706 San Jacinto Blvd. Austin, TX 78701 Hours: 8:00 AM to 5:00 PM	Central Services Building 4th Floor Receptionist **Attn: Richard Ehlert** **RFQ #303-6-00039** 1711 San Jacinto Blvd. Austin, TX 78701 Hours – 8:00 AM to 5:00 PM

2.9. **RECEIPT OF SUBMITTALS.** Submittals will be received until the date and time established for receipt, then opened. Only the names of the respondents will be made public. Telephone, fax, and email submittals are not acceptable. All submittals shall become the property of the State of Texas after the deadline/opening date. A submittal shall constitute an offer for a period of ninety (90) days or until selection is made by TFC.

2.10. **INQUIRIES.** (a) All inquiries submitted by email to richard.ehlert@tfc.state.tx.us and shall be in an editable format, i.e. Microsoft Word, or standard email, as opposed to an un-editable format such as Adobe Acrobat .pdf files. All inquires will result in written responses with copies posted to the Electronic State Business Daily at: http://esbd.cpa.state.tx.us/. If respondents do not have Internet access, copies may be obtained through the point of contact listed above.

(b) Upon issuance of this RFQ, beside written inquiries as described above, other employees and representatives of TFC and the using agency will not answer questions or otherwise discuss the contents of the RFQ with any potential consultant's representatives. This restriction does not preclude discussions with TFC for the purpose of conducting business unrelated to this submittal. Failure to observe this restriction may be grounds for disqualification.

III. EVALUATION AND AWARD.

3.1. **EVALUATION.** (a) An evaluation committee made up of TFC employees will be established to evaluate the submittals. By submitting qualifications in response to this RFQ, Respondent accepts the solicitation and evaluation process and acknowledges and accepts that scoring of the submittals will

involve subjective judgments by the evaluation committee. The evaluation committee will evaluate and score each submittal based solely on relevant qualifications.

(b) The evaluation committee will determine if interviews/discussions are necessary. Award of the Contract may be made without interviews/discussions, at the sole discretion of TFC. The evaluation committee may determine that discussions are necessary to clarify or verify a written submittal. TFC may, at its discretion, elect to have Respondents participate in interviews, which will be factored into the evaluation of a Respondent.

(c) In evaluating submittals to determine demonstrated competence to perform the legal services requested, TFC may consider information related to past contract performance of a Respondent including, but not limited to, the Vendor Performance Tracking System (available at http://www.window.state.tx.us/procurement/prog/vendor_performance/). Prior work performance with TFC, and other State agencies or governmental entities which are familiar with a Respondent's performance, depending on problems encountered, may be grounds for disqualification.

3.2. **AWARD.** It is the intent of TFC to award a contract to a Respondent on the basis of demonstrated competence and qualifications to perform the legal services requested for a fair and reasonable price. The selection of and contracting with the successful Respondent is subject to the approval of the Office of the Attorney General.

ATTACHMENT A

HUB Subcontracting Plan & HUB Vendor List

(Posted as 'Package 2' and 'Package 3' on the ESBD)

For electronic completion of the HSP (RECOMMENDED) click here:

http://www.window.state.tx.us/procurement/prog/hub/hub-forms/

ATTACHMENT B

EXECUTION OF SUBMITTAL

NOTE: FAILURE TO SIGN AND RETURN THE EXECUTION OF SUBMITTAL SHALL RESULT IN REJECTION OF THE RESPONSE.

By signature hereon, the respondent certifies that:

All statements and information prepared and submitted in the response to this RFQ are current, complete and accurate.

He/she has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response. Failure to sign the Execution of Submittal or signing it with a false statement, shall void the submitted offer or any resulting contracts.

Neither the respondent or 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 Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business.

Respondent certifies that if a Texas address is shown as the address of the respondent, respondent qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

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

Pursuant to Texas Government code, Title 10, Subtitle D, Section 2155.004(a), the respondent has not received compensation for participation in the preparation of specifications for this solicitation.

Respondent is in compliance with TGC, Title 6, §669.003, relating to contracting with an executive of a state agency. If Section §669.003 applies, respondent shall provide the following information as an attachment to this response: Name of former executive, name of state agency, date of separation from state agency, position with respondent, and date of employment with respondent.

Respondent agrees that any payments due under any contract arising from this Submittal will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

System for Award Management (SAM): Prior to awarding state funds for goods and/or services rendered, the State of Texas will conduct a required search of your firm using the Federal System for Award Management (SAM). This is a Federal government maintained database that records and tracks organizations either known to or suspected of contributing to terrorist organizations. No state funds may be paid to an individual or firm whose name appears on this list. TFC reserves the right, in its sole discretion, to deny and/or exclude any individual or firm from an award whose name appears on this list.

Texas Family Code Compliance Requirement: Under TGC, Title 5, Subtitle D, Section 231.006, Family Code (relating to child support), the individual or business entity named in this solicitation is eligible to receive the specified payment and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. The response includes the names of each person with a minimum of twenty-five percent (25%) ownership of the business entity submitting the response. Respondent shall provide the name(s) below. Upon award, respondent shall provide TFC Procurement the Social Security number(s) of the individual(s) listed below.

Firm Owner(s), Partners, Sole Proprietors, Share Holder(s)
of twenty-five percent (25%) interest:

Name: _____ _____

Name: _____ _____

Name: _____ _____

Name: _____ _____

Respondent represents and warrants that the individual signing this Execution of Submittal is authorized to sign this document on behalf of the respondent and to bind the respondent under any contract resulting from this submittal.

RESPONDENT (COMPANY): _____

SIGNATURE (INK): _____

NAME (TYPED/PRINTED)

_____

TITLE: _____

DATE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE AND FACSIMILE NO.:

_____

TEXAS IDENTIFICATION NUMBER (TIN)*:

_____

*The Texas Identification Number if the taxpayer number assigned and used by the Texas Comptroller of Public Accounts. Enter this number in the space provided above. If this number is not known, complete the following:

Enter your Federal Employer's Identification Number _____

ATTACHMENT C
RFQ / SUBMITTAL CHECKLIST

!!This checklist should be used by potential respondents to insure your submittal is complete.!!

Checklist for RFQ #303-6-00039
Title: Request for Qualifications Outside Counsel Construction Services
Opening Date: 8/17/2015 at 3:00 PM Central Time

Vendor Name and Address

_____
_____
_____
_____

Contact: _____
TX Taxpayer VIN#: _____
Office#: _____
Mobile#: _____
Email: _____

1. Submit one (1) original and 4 copies of submittal _____

Submittal Content

- Company Information _____
- Minimum Qualifications _____
- Relevant Experience and Qualifications _____
  - Firm / Attorney Qualifications
  - Designated Attorney Qualifications
  - HUB Outreach Efforts
  - Confirmation of Criminal Investigations
  - Confirmation of Compliance
  - References
- Fee Information / Schedule _____
- Attachment A, HUB Subcontracting Plan _____
- Attachment B, Execution of Submittal _____
- Copy of Law License / Registration _____
- Disclosure Statement re Conflict of Interests _____
- Acknowledgement of Addenda _____

2. Submit one (1) PDF copy on a CD: _____

EXHIBIT A

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

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

INDUCEMENTS

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

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

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

AGREEMENT

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

Section 1. Purpose/OAG Approval.

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

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

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

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

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

Section 2. OCC Term.

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

Section 3. Obligations of Outside Counsel.

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

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

3.3 Public Information and Client Communications. Outside Counsel acknowledges that information created or exchanged in the course of representation of a governmental body may be subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, and may be subject to required disclosure in a publicly-accessible format pursuant to Section 2252.907 of the Texas Government Code. Outside Counsel will exercise professional judgment and care when creating documents or other media intended to be confidential or privileged attorney-client communications that may be subject to disclosure under the Public Information Act (e.g. invoices where incidental notation may tend to reveal litigation strategies or privileged information). Outside Counsel should mark confidential or privileged attorney-client communications as confidential. This subsection shall not be interpreted to limit Outside Counsel's duty to provide full disclosure to Agency and the OAG as necessary in Outside Counsel's judgment to represent Agency with due professional care or as required by applicable law or disciplinary rules.

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

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

unless prior written approval is obtained from the Agency and OAG. Any subcontracted legal counsel must comply with subsection 9.8 (Conflict of Interest) of this OCC.

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

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

Section 4. Liability.

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

[$] for this OCC Term.

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

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

Section 5. Compensation/Expenses.

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

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

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

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

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

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

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

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

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

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

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

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

5.3 Subcontractor Payments. Subject to Agency's prior approval, Agency will reimburse Outside Counsel for the actual, reasonable and necessary expenses relating to Outside Counsel's use of subcontractors. Outside Counsel shall be responsible for any payments and other claims due to subcontractors for work performed under this OCC. Outside Counsel, in subcontracting for any performances or in support of any of the performances specified herein (e.g., expert services, local counsel, and other services) expressly understands and agrees that Agency shall not be directly liable in any manner to Outside Counsel's subcontractor(s).

5.4 Legal Research. The Agency may reimburse Outside Counsel for its reasonable and necessary expenses relating to legal research, including online legal research.

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

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

clerks, including but not limited to the following: overtime, file opening, file organization, docketing, and other administrative tasks; and preparation of billing, invoice review, budget preparation, and communications regarding same or any other accounting matter.

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

Section 6. Invoices for Payment.

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

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

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

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

Daniel Benjamin
Director of Accounting
Texas Facilities Commission
Fiscal Management / Accounts Payable
P.O. BOX 13047
Austin, Texas 78711-3047

OR

E-mail to: accountspayable@tfc.state.tx.us

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

Kay Molina
General Counsel
Texas Facilities Commission
1711 San Jacinto Boulevard
Austin, Texas 78701

9.7 Dispute Resolution.

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

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

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

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

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

9.8 Conflict of Interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Firm Name]

By: _____

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

Texas Facilities Commission

By: _____

Harvey Hilderbran
Executive Director

G.C. _____

Approved:

By the Office of the Attorney General of Texas

_____
Attorney General or Designee

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

Addendum A

Services

The following scope of services is being sought by TFC: Advise TFC on a wide variety of contract, construction, real estate and real estate development and redevelopment matters, including, but not limited to. the following:

- review of complex title materials including covenants and restrictions, easements, air rights agreements, view corridors and zoning;
- review ground surveys and compare title materials to surveys of the redevelopment area to ascertain ownership rights and necessary transactions/agreements that are required to perfect such rights;
- conduct an analysis of existing title rights associated with property within the redevelopment project, identify additional title work needed, and develop a plan for obtaining the needed title work;
- develop a title strategy that effectively allows the development and redevelopment to move forward from a property rights standpoint;
- provide advice as to the appropriate legal strategy to effect property transactions;
- consult on TFC's adopted contract from as they compare to industry standard forms for owners and particularly as to management of risk for the owner;
- draft and review professional service and construction contracts utilizing TFC's adopted forms;
- provide advice on TFC's Uniform General Conditions and Supplementary General Conditions, as amended, as they compare to industry standard forms and particularly as to management of risk for the owner;
- provide advice on disputed change orders and contended awards of substantial completion; and,
- advise and provide ancillary transaction services including environmental law, prevailing wage rates and other related laws, enforcement of contracts, insurance coverages and related matters that may arise during the development and redevelopment process.

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.

EXHIBIT B
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

_____
[Authorized Signatory]
[Title]
[Agency Name]

Date:_____

OUTSIDE COUNSEL

_____
[Authorized Signatory]
[Title]
[Firm Name]

Date:_____

APPROVED:

OFFICE OF THE ATTORNEY GENERAL

_____
ATTORNEY GENERAL OR DESIGNEE