



**Contracting Branch | Infrastructure Division
4200 Smith School Road
Austin, Texas 78744**

**REQUEST FOR QUALIFICATIONS (RFQ)
FOR
OUTSIDE COUNSEL LEGAL SERVICES**

**PROJECT NO. 1111793
Northeast Texas Trails (NETT) Feasibility Study**

918-74: Legal Consulting
961-49: Legal Services, Attorney

| | |
|-------------------------------------------|-----------------------------------|
| <i>RFQ Issue Date:</i> | <i>January 26, 2024</i> |
| <i>Optional Pre-Submittal Conference:</i> | <i>10:00 AM, February 8, 2024</i> |
| <i>Questions Due:</i> | <i>5:00 PM, February 15, 2024</i> |
| <i>Question/Answers Addendum</i> | <i>(Est) February 19, 2024</i> |
| <i>Response Due Date:</i> | <i>2:00 PM, February 27, 2024</i> |

Contract Manager: Lyndsi Sandoval, CTCD, CTCM
Phone: (512) 389-8777
Email: lyndsi.sandoval@tpwd.texas.gov

ATTENTION: It is the responsibility of interested parties to periodically check the Electronic State Business Daily (ESBD) website for updates to this solicitation prior to submitting a response. The Respondent's failure to periodically check the ESBD will in no way release the selected contractor from "addenda or additional information" resulting in additional cost to meet the requirements of the RFQ.

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SECTION I – GENERAL INFORMATION AND STATEMENT OF WORK

1. INTRODUCTION

- 1.1. The Texas Parks and Wildlife Department (“TPWD” or “Owner”) is soliciting statements of qualifications (“Qualifications”) from qualified law firms and attorneys (“Respondents”) to provide Outside Counsel Legal Services specializing in Real Estate Law and Public/Private land ownership for a Feasibility Study at Northeast Texas Trails (“NETT”), Statewide, Texas (*Ref. Scope of Work and Specifications – Section I, Subsection 7*).

2. BACKGROUND

- 2.1 TPWD is soliciting Responses from firms specializing in Real Estate Law and Public/Private land ownership that are able to provide legal investigation, review, research, advice and assistance identifying critical issues and legal strategies related to the NETT. Firm will coordinate such efforts with RVi Planning + Landscape Architecture, Inc. (“RVi”). RVi is the Landscape Architecture Firm under contract to complete Feasibility study with TPWD resulting in a report that will be incorporated into the final Feasibility Study authored by RVi.
- 2.2 This project will assess the feasibility of converting the NETT into a Linear State Park and identify the existing and future resources, opportunities, and obstacles involved. The purpose of the study is to evaluate property within the existing NETT and examine the desirability and advise of next steps forward to establishing the existing trail system into a Texas State Park.
 - 2.2.1 The NETT is a 130-mile railbanked trail with 8 railbank agencies representing segments along the trail. Currently, the trail is in various states of improvement and much of the funding for improvements has been provided through grant awards that could have land transfer legal implications. There are also a number of existing easements along the length of the trail for adjacent landowners to move livestock that are being studied by the consultant team. Ownership documentation has been gathered and will be ready for distribution to the selected legal consultant upon project kickoff.

3. SOLICITATION METHOD AND INTENT

- 3.1 The Request for Qualifications (“RFQ”) solicitation method allows qualified respondents to submit a written response addressing qualifications, experience, availability, approach and other factors that will be employed to ensure successful accomplishment of the requirements set forth herein. TPWD will review, compare and evaluate qualifications based on the criteria and weights identified in this RFQ. This procurement complies with the state of Texas law, including Texas Government Code, Title 10, Subtitle F, Chapter 2254, Subchapter D: OUTSIDE LEGAL SERVICES and Texas Government Code, Title 4, Subtitle A, Chapter 402, Subchapter A: GENERAL PROVISIONS.
- 3.2 It is TPWD’s intent to identify qualified respondents and award a single contract to provide professional legal services specializing in Real Estate and Public/Private Land Ownership to the Respondent whose qualifications are considered to be ‘most qualified’ for these services. By submitting a response to the RFQ, the Respondent certifies understanding of this RFQ and has full knowledge of the scope, nature, quality, and quantity of the work to be performed, the detailed requirements of the services to be provided, and the conditions under which the services are to be performed.
 - 3.2.1 As a result of this solicitation, TPWD intends to award one (1) Contract. Any award is contingent upon approval by TPWD and OAG.
- 3.3 Upon selection of Outside Counsel and the negotiation of a fair and reasonable fee, TPWD will seek the approval of the Office of the Attorney General (“OAG”) to enter into an Outside Counsel Contract (“Contract” or “OCC”) as required by statute, Texas Government Code, §402.0212.

- 3.4 **Reservation of Rights:** TPWD may evaluate the qualifications based on the anticipated completion and sequencing of all or any portion of the Project. TPWD reserves the right to reject any and all qualifications and not make a recommendation for award. TPWD makes no representations, written or oral, that it will enter into any form of agreement with any Respondent to this RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ.
- 3.5 **Type of Contract:** Any contract resulting from this solicitation will be in the form of the OCC between TPWD and selected Outside Counsel using the OCC template provided by the OAG. All terms and conditions and other requirements contained in the final OCC shall govern any agreement issued as a result of this RFQ. A sample of the current OCC template is attached to this RFQ as [Exhibit F, Sample Outside Counsel Contract Template](#). If the OAG revises the OCC template prior to Contract execution, the revised template shall be used by TPWD and Outside Counsel.

4. ADDENDA AND CLARIFICATIONS

- 4.1 Any clarifications or interpretations of this RFQ that materially affect or change its requirements will be posted as an addendum by Owner on the Electronic State Business Daily (ESBD). It is the responsibility of all Respondents to check these websites for updates to the procurement and addenda prior to submitting a Response. All addenda issued by Owner before the responses are due are considered part of the RFQ, and **Respondent shall include all signed and dated addenda with their response submission. FAILURE TO SUBMIT EACH SIGNED AND DATED ADDENDUM WITH THEIR RESPONSE MAY RESULT IN REJECTION.**
- 4.2 Respondents shall consider only those clarifications and interpretations that the Owner issues by addenda. Interpretations or clarifications in any other form, including oral statements, will not be binding on the Owner, and should not be relied on in preparing responses to this RFQ.
- 4.3 Addenda shall be issued by the Point-Of-Contact in [Section II, Subsection 3.1](#) for this RFQ and posted on the Electronic State Business Daily (ESBD) web site of <https://www.txsmartbuy.com/esbd>.

5. CONTRACT TERM

- 5.1 **Contract Term:** The initial contract will be valid through August 31, 2024, *please note project to be completed by April 30, 2024*. To remain valid, all qualifications must be updated by the selected firm to reflect any significant changes in the firm's ownership, structure or method of operation, or when requested by TPWD. Services undertaken pursuant to this RFQ will be required to commence within thirty (30) calendar days of delivery of a Notice to Proceed.
- 5.2 **Contract Extensions:** In the event that the contract, if any, resulting from the award of this RFQ shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified services, TPWD in consultation with OAG, may, with the written consent of the selected firm, extend the contract for a period of time as may be necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by TPWD to serve in the best interest of the State, at the then-current Contract rate(s) as modified during the Contract term. Any extensions beyond the initial term is at the discretion of OAG and shall be under the same terms and conditions including any approved changes.
- 5.3 **Contract Completion:** The performance period under any subsequent contract shall commence upon the effective date of the agreement and shall remain in effect until such time as the services acquired in conjunction with this solicitation and resulting contract have been delivered and/or completed, and accepted by TPWD's authorized representative.
- 5.4 **Modifications:** The contract may be amended in writing by mutual consent of both parties.

- 5.5 Quantities: Unless this RFQ states otherwise, the resulting contract award does not guarantee volume or a commitment of funds.

6. QUALIFICATIONS AND EXPERIENCE

- 6.1 The Office of the Attorney General of Texas (OAG) generally provides legal representation to TPWD in litigation. The TPWD Legal Division has primary responsibility to manage, monitor and coordinate the provision of legal services by Outside Counsel in other matters. Any engagement resulting herein will be documented by a form contract that has been approved by the OAG and is subject to further modifications by TPWD or the OAG.

6.2 Minimum Qualifications for Counsel Firms

- 6.2.1 Counsel firms must have expertise in real estate law as relevant to the subject area for which a response is made.
- 6.2.2 Counsel firms must not have had one or more governmental contracts terminated for cause or default.
- 6.2.3 Counsel firms must maintain malpractice insurance or an acceptable substitute in an amount acceptable to the Agency (\$1 million).
- 6.2.4 Counsel firms shall ensure all attorneys providing legal services applicable to the Contract remain active and in good standing with the State Bar throughout the Contract Term.

6.3 Minimum Qualifications for Attorneys

- 6.3.1 Counsel firms shall designate a Lead Attorney. The Lead Attorney acts as the point of contact for contracted services and is responsible for communication with TPWD regarding the services required as well as oversight of all contracted services.
- 6.3.2 The Lead Attorney performing work under a contract resulting from this RFQ must be engaged in the active practice of law for at least five (5) consecutive years prior to the date of responding to this RFQ.
- 6.3.3 All attorneys performing work under a contract resulting from this RFQ must be licensed and currently eligible to practice law in the State of Texas as reflected by the State Bar of Texas Online Membership Directory (required by the OAG); or must be in the process of obtaining such license.
- 6.3.4 All such attorneys must be in good standing with the State Bar of Texas with no public disciplinary history in Texas or elsewhere as reflected by the State Bar of Texas' Online Membership Directory.
- 6.3.5 All such attorneys must not be proposed for debarment or suspension. All such attorneys and any paralegals or other support staff must not be declared ineligible or voluntarily excluded from contracting with any federal, State of Texas, or local department or agency.

- 6.4 Supporting Documentation: Respondent shall complete and submit *Exhibit B – Firm's Qualification Form* and *Exhibit C – Key Personnel* to provide documentation to support the above qualifications. (*Ref. Section II, Subsection 4.2.*)

7. SCOPE OF WORK AND SPECIFICATIONS

TPWD is seeking statements of qualifications for legal services, which will augment existing Contracted Planning & Landscape Architecture firm. The qualifications shall demonstrate the Respondent's ability to perform legal services specializing in Real Estate and Public/Private Land Ownership as they are requested by TPWD. The scope includes, but is not limited to, the following services:

- 7.1 TPWD is seeking statements of qualifications for legal services, which will augment existing Contracted Planning & Landscape Architecture firm. The qualifications shall demonstrate the Respondent's ability to perform legal services specializing in Real Estate and Public/Private Land Ownership as they are requested by TPWD. The scope includes, but is not limited to, the following services:

- 7.1.1 Review existing rail bank agreements (“RBAs”) and related laws to determine process and issues associated with assigning the agreements to TPWD or entering new RBAs.
 - 7.1.2 Review existing Surface Transportation Board approvals and regulations and determine whether additional approvals are necessary.
 - 7.1.3 Review existing interlocal agreements, if any, among the NETT Coalition, governmental entities, and other parties.
 - 7.1.4 Review other applicable federal, state, and local laws.
 - 7.1.5 Prepare a summary of key regulations and requirements applicable to TPWD as the responsible party under Rail Bank Authorities.
 - 7.1.6 Review title and survey documentation, identify legal issues associated with existing easements and encroachments, and recommend solutions.
 - 7.1.7 Participate in executive session meetings with TPWD leadership if requested by TPWD.
- 7.2 **Site Location:** Services will be provided in Texas. The location of the NETT can be found in [Attachment 1 – Site Maps](#). Outside Counsel may be required to travel to complete legal services requested through this Solicitation. Outside Counsel must provide their own transportation for required Services, as applicable. Information regarding travel expenses may be found in [Exhibit F, Sample Outside Counsel Contract Template](#). Travel expenses not addressed in the sample template contract will be at Outside Counsel's own expense.

8. SELECTED FIRM REQUIREMENTS

- 8.1 Firm agrees to conduct all its services under the awarded contract by and through appropriate communications with TPWD. No work, installation or other services shall be undertaken by the firm except with the prior written authorization by TPWD. Firm understands and agrees that work and other services performed without prior written authorization of the TPWD is work outside the scope of this contract and shall be performed exclusively at Firm's risk.
- 8.2 Firm shall provide service in accordance with requirements specified herein and the resulting contract(s) and contract documents.
- 8.3 Firm shall comply with all laws, ordinances, statutes and regulations pertaining to the services requested herein, and shall obtain such permits, licenses or other authorizations as may be required.
- 8.4 Firm is responsible for all costs incurred in the performance of the contract. Firm will submit required invoices for legal services with associated expenses monthly by the required invoice submission deadline specified in the contract. If the invoice submission deadline is not met, the invoice may be denied for payment.
 - 8.4.1 Pursuant to Texas Government Code, §§402.0212(b)-(b-3), TPWD is required to submit invoices to OAG for review and approval.
 - 8.4.2 Pursuant to Texas Government Code, §402.0212(c), Outside Counsel must pay an administrative fee to the OAG for the review of invoices. The fee is non-refundable and is due each fiscal biennium. Outside Counsel may not charge or seek reimbursement from TPWD for this fee. This administrative fee must be paid in accordance with OAG requirements prior to the Contract state date. OAT requirements can be found at: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/general-counsel/LetterToAgenciesOnOutsideCounselContracts.pdf>
 - 8.4.3 The anticipated administrative fee to be paid by Outside Counsel for the Contract resulting from this solicitation is \$500.00. The OAG may withdraw approval of the Contract, rendering it void,

if the administrative fee is not paid within thirty (30) calendar days of the date of OAG final approval and return of the OCC to TPWD.

- 8.5 State Sales Tax: TPWD qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Tax Code (Title 2, Chapter 151, Subsection 151.309).

9. TPWD RESPONSIBILITIES

- 9.1 TPWD will designate a Project Manager upon contract award.
- 9.2 The TPWD Project Manager will coordinate communication between Respondent and TPWD, including TPWD's Legal Division, as needed. The Project Manager will notify Respondent if and when TPWD leadership or Legal Division requests an update or consultation directly with Respondent.
- 9.3 Contract Administration: TPWD will monitor the successful Respondent's progress and performance and ensure services conform to the established specifications and requirements. At the conclusion of the project or contract term, TPWD will complete a Vendor Performance Form assessing the output and outcome measures and compliance with the terms and conditions of the contract.

10. COMPENSATION

- 10.1 The required Services as provided through the information in this solicitation, will be compensated on an hourly fee basis. Proposed hourly rates must be fair and reasonable for the Services provided and should not exceed \$525 per hour for attorneys and \$225 per hour for paralegals.
- 10.2 Outside Counsel may not bill for administrative staff, law clerks, or interns. Compensation for all Services provided and expenses incurred on a Contract resulting from this Solicitation must be invoiced and paid according to the agreed upon Contract fee schedule.
- 10.2.1 TPWD will request a fee schedule from the successful Respondent. The Respondent will have three (3) business days from notification to submit a fee schedule that is fair and reasonable for the Services being provided. If Respondent fails to comply within the given time-period, TPWD reserves the right to move to the next highest scoring Respondent.

11. INSURANCE

- 11.1 Firm shall procure, carry and maintain during the entire period of their performance under this contract the insurance in the types and amounts as required in [Attachment 3, Owner's Insurance Requirements](#). Firm shall furnish certificates of insurance including corresponding policy endorsements, and make available at no cost to TPWD, copies of declaration pages as evidence thereof, if requested.
- 11.2 TPWD, its officials, directors, employees, representatives, and volunteers shall be added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under this contract. The additional insured status must cover completed operations as well. This is not applicable to workers' compensation policies.
- The required coverage is to be with companies licensed in the state of Texas, with an "A" rating from A.M. Best, and authorized to provide the corresponding coverage.
- 11.3 Prior to the commencement of service and not later than ten (10) days following Notice of Selection, the Firm shall furnish to TPWD, for approval, a certificate of insurance as proof that the required insurance is in full force and effect. The certificate of insurance shall be emailed to: lyndsi.sandoval@tpwd.texas.gov.

SECTION II – RESPONSE REQUIREMENTS

1. SCHEDULE OF EVENTS

TPWD intends to proceed according to the following schedule. These dates represent a tentative schedule of events. TPWD reserves the right to change the dates in the schedule of events above upon written notification to prospective Respondents through a posting on the Electronic State Business Daily (ESBD) as an Addendum.

| Event | Date/Time |
|----------------------------------|-------------------------------------|
| RFQ Issue Date: | January 26, 2024 |
| Pre-Submittal Conference: | February 8, 2024 @ 10:00 AM |
| Questions Due: | February 15, 2024 by 5:00 PM |
| Proposal Due Date: | February 27, 2024 by 2:00 PM |

2. ONLINE PRE-SUBMITTAL CONFERENCE

- 2.1. An optional online pre-submittal conference will be held on **Thursday, February 8, 2024 at 10:00 AM** (CT). Although the pre-submittal conference is not mandatory, Respondents are strongly encouraged to attend this meeting as important information regarding qualifications, submittal requirements and other details will be discussed.
- 2.1.1. The online pre-submittal conference will be conducted using Microsoft® Teams. Respondents may use their browser to access the meeting or the Microsoft® Teams application.
- 2.1.2. In order to receive an invitation to the Teams™ meeting, Respondents must pre-register using the link below. After registering, you will receive a confirmation email containing information about joining the meeting.
Register in advance using this link: [Pre-Submittal Conference Registration Form](#)
- 2.1.3. Following the online meeting, the PowerPoint™ presentation will be posted to the Electronic State Business Daily.

3. INQUIRIES

- 3.1. **CONTACT:** All requests, questions, or other communications about this Solicitation shall be made in writing to TPWD's Infrastructure Contracting Branch, addressed to the following person:
- Lyndsi Sandoval, CTCD, CTCM
Texas Parks & Wildlife Department
Infrastructure Division
4200 Smith School Road
Austin, Texas 78744
- Email: lyndsi.sandoval@tpwd.texas.gov
- 3.2. **CLARIFICATIONS:** TPWD reserves the right to issue addenda at any time prior to the deadline for receipt of qualifications. Interpretations or clarifications in any other form, including oral statements, will not be binding and should not be relied on when preparing responses to this solicitation. TPWD will allow written requests for clarification of this solicitation. Questions may be e-mailed to the point-of-contact listed in [Section II, Subsection 3.1](#). Questions should be submitted in the following format: a) Reference the Solicitation number; b) Reference the Section number, Page number, Paragraph number, and Text of passage being questioned; and c) Question.
- 3.3. **DEADLINE FOR SUBMISSION OF QUESTIONS:** To provide TPWD with sufficient time to adequately prepare responses to vendor inquiries, all questions must be submitted by the deadline specified in [Section II, Subsection 1](#).
- 3.4. **ANSWERS TO QUESTIONS:** The target date for answering questions is within three business days after deadline for questions. Official answers will be posted as an addendum to this solicitation, on the ESBD at

<http://www.txsmartbuy.com/esbd>. Respondent names will be removed from questions in the responses released. TPWD reserves the right to amend answers prior to the proposal submission deadline. **Note:** *It is the responsibility of interested parties to periodically check the ESBDB for updates to the procurement prior to submitting a proposal. Respondent's failure to periodically check the Electronic State Business Daily (ESBD) will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the solicitation requirements.*

- 3.5. **PROHIBITED COMMUNICATIONS:** Upon issuance of this solicitation, TPWD, its representative(s), or partners will not answer questions or otherwise discuss the contents of this Solicitation with any potential Respondent or their representative(s), except for the written inquiries described in [Section II, Subsection 3.2](#) above. Attempts to ask questions by phone or in person will not be allowed or recognized as valid. **Failure to observe this restriction may disqualify respondent.** Respondent shall rely only on written statements issued through or by TPWD's purchasing staff. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this solicitation.
- 3.6. **PUBLIC INFORMATION:** All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.) after award of a Contract. However, certain information may be confidential and fall under an exception to disclosure under the Public Information Act such as proprietary information, trade secrets, and certain commercial and financial information where disclosure might cause "substantial competitive harm to your business." If the Respondent believes that their response to this solicitation contains confidential information in those categories, the Respondent must specifically document this at the top or bottom of each page that contains the information the Respondent considers confidential. The Respondent's documentation must include a statement that confidential information is contained on that page, refer to its exact location on the page, and describe the specific nature of the exception to the Texas Public Information Act that the Respondent believes applies to this information, i.e., copyrighted, trade secret, proprietary, financial etc. A general disclaimer that the Respondent's response contains confidential information will not be sufficient to meet this requirement. If such documentation is not provided, TPWD will assume that all information provided in the response to this solicitation is disclosable under the Act.
- 3.6.1. TPWD strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFQ information.

4. PROPOSAL CONTENT

Below is a summary of required and requested information. Qualifications submitted without this information will be evaluated accordingly. TPWD reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors in the best interest of the state.

GENERAL RESPONSE FORMAT:

- 4.1. **EMAIL SUBMITTALS ARE REQUIRED FOR THIS SOLICITATION** in accordance with [Section II, Subsection 5](#).
- 4.2. **REQUIRED QUALIFICATIONS CONTENT:**
- Respondent **MUST** include the following documentation in their qualifications submission. **Failure to submit with the qualifications package will result in disqualification.**
- 4.2.1. **Exhibit A – Execution of Response:** Respondent must submit original signed, dated and completed [Exhibit A – Execution of Response](#).
- 4.2.2. **Exhibit B – Firm's Qualification Form:** Include completed [Exhibit B – Firm's Qualification Form](#).
- 4.2.3. **Exhibit C – Key Personnel:** Include completed [Exhibit C](#) (or reasonable resumes)

- 4.2.4. **Exhibit D – Technical Submittal:** Include *Technical Submittal – tabbed Exhibit D* (max 2 pages), including numbered responses corresponding to each of the items listed in *Exhibit D*.
- 4.2.5. **Exhibit E – Response Submission Checklist** – Include completed *Exhibit E*.
- 4.2.6. **Addenda:** Respondent shall acknowledge receipt of any addenda generated as part of this solicitation. The respondents should include the signed and dated addendum(s) with their response submission.

5. RESPONSE SUBMISSION

Below is a summary of required and requested information. Qualifications submitted without this information will be evaluated accordingly. All responses will be evaluated on the completeness and quality of the content. Only those respondents providing complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail. TPWD reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors in the best interest of the state.

- 5.1. **Electronic submittals are required for this solicitation.** Submit qualifications by email to INFContracting@tpwd.texas.gov.
 - 5.1.1. Enter the Solicitation Number and RFQ opening date in the subject line of email.
- 5.2. All responses shall be received electronically by TPWD prior to 2:00 PM Central Time on the date specified in *Section II, Subsection 1*. Late responses will not be considered under any circumstance.
- 5.3. It is the responsibility of the Respondent to ensure that their qualifications are received by TPWD prior to the time and date indicated.
- 5.4. Respondents shall submit **one (1)** PDF of the Qualifications inclusive of all exhibits and addenda, with Exhibit A signed in ink.
 - 5.4.1. Qualifications should include a cover letter, not to exceed one (1) single sided page that includes a single point of contact along with contact information for the purposes of this solicitation.
 - 5.4.2. Qualification should be on 8 ½ x 11-inch pages.
 - 5.4.3. The minimum font size for all text in the Qualifications shall be no less than 11 point.
 - 5.4.4. Qualifications should be paginated and contain a full table of contents.
 - 5.4.5. Responses should not include any information regarding Firm's fees, pricing or other compensation. Pricing will not be considered during the evaluation process.
- 5.5. Respondents must submit only material directly pertinent to the requirements of this solicitation. Extraneous narrative, elaborate brochures, public relations material, and other similar documents may not be submitted.
- 5.6. Qualifications must be completed and signed by person(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity submitting the proposal.
- 5.7. **Telephone, and facsimile responses are NOT an acceptable response to an RFQ.** All submitted responses become the property of TPWD after the RFQ due date/deadline. Responses submitted shall constitute an offer for a period of ninety (90) days or until selection is made by TPWD, whichever is earlier.
- 5.8. **No Reimbursement for Costs:** Respondent acknowledges and accepts that any costs incurred from the Respondent's participation in this RFQ process shall be at the sole risk and responsibility of the Respondent. Respondents submit a response at their own risk and expense.
- 5.9. Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.
- 5.10. Qualifications may be withdrawn prior to the solicitation deadline. An email notification submitted to the Point of Contact identified in *Section II, Subsection 2* will be acceptable as written notice for withdraw. No response may be withdrawn after the solicitation deadline.

6. EVALUATION AND AWARD

- 6.1. Solicitation responses shall be evaluated in accordance with Texas Government Code, Chapter 2254, Subchapter D. A contract will be awarded to the Respondent whose qualifications are considered to be 'most qualified' for the services being solicited in this RFQ.
- 6.2. Except as otherwise provided in this RFQ, no Qualifications may be changed, amended or modified after it has been submitted to TPWD. However, Qualifications may be withdrawn and resubmitted at any time prior to the submittal deadline. No qualification may be withdrawn after the submittal deadline without TPWD's consent, which will be based on Respondent's submittal of a written explanation and documentation evidencing a reason acceptable to TPWD, in TPWD's sole discretion.
- 6.3. Step 1 – Administrative Review by Infrastructure: Only a complete response with the listed required submittal documents will be considered. Failure to meet the minimum qualifications and submit the required documents will result in a response being declared non-responsive. Qualifications that do not conform to the instructions included in this RFQ may be rejected by TPWD. TPWD reserves the right to reject any or all qualifications and to waive informalities and minor irregularities in responses received. No response received in TPWD Infrastructure Contracting after the exact date and time specified as the deadline for responses will be considered.
- 6.4. Step 2 – Initial Evaluation: Solicitation responses that meet the minimum qualifications will be submitted to an evaluation committee for review and scoring. The evaluation committee will evaluate and score each response based on established criteria. The committee will include employees of TPWD and may include other impartial individuals who are not TPWD employees. Respondents shall not contact any members of the committee. Responses will be evaluated according to the respondent's ability to best satisfy TPWD requirements. Respondent's submission is evaluated and scored based on the following criteria:

| Evaluation Criteria - | Weight |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Demonstrated recent success in identifying critical issues and legal strategy for a project similar to the NETT. | 40% |
| The technical competence, and qualifications of the team, including each member's specific role and responsibility proposed for this project and their past experience and expertise in the areas for which they are proposed. | 30% |
| The team's capacity and ability to provide TPWD with the required services detailed in the SOQ. Consultants shall be able to demonstrate a thorough understanding of TPWD's needs and services to be provided in order to fully staff, manage and complete the work. | 20% |
| Accuracy, completeness, legibility and coherency of this RFQ. | 10% |

- 6.5. TPWD may contact reference provided in response to this solicitation. TPWD may contact Respondent's clients, or solicit information for any available source, including but not limited to the following:
 - 6.5.1. Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria in compliance with applicable provisions of Gov't Code §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for any of the following conditions:
 - a. The Vendor has a score less than C or Legacy Unsatisfactory in the Vendor Performance System,
 - b. Currently under a Corrective Action Plan through the Texas Comptroller of Public Accounts (CPA),
 - c. Having repeated negative Vendor Performance Reports for the same reason,

- d. Having Purchase Orders/Contracts that have been cancelled in the previous 12 months for non-performance (i.e., failure to remedy defective work, late delivery, etc.).

6.5.2. Contractor performance information is located on the CPA web site at: www.txsmartbuy.com/vpts. TPWD may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.115), TPWD may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of Contracts. Any such investigations shall be at the sole discretion of TPWD, and any negative findings, as determined by TPWD, may result in non-award to the Respondent.

6.6. Award: TPWD reserves the right to award a contract to a single firm, or award to more than one firm, whichever provides the best value to TPWD in performance of this service. TPWD will be the sole judge of best value. (Refer to *Section II, Subsection 7.7* for Best Value criteria.)

6.7. Acceptance of Evaluation Methodology: By submitting its Qualifications in response to this RFQ, the Respondent accepts the evaluation process and acknowledges and accepts that determination of the “most qualified” firm will require subjective judgments by the TPWD. The results of this most qualified determination will be combined with the Qualifications evaluation results to determine the “best value” proposition for TPWD.

EXHIBIT A – EXECUTION OF RESPONSE

Execution of Response

PASS / FAIL

NOTE: THIS EXHIBIT MUST BE SIGNED AND RETURNED WITH THE SOLICITATION RESPONSE. RESPONSES THAT DO NOT INCLUDE THIS EXHIBIT WILL BE DISQUALIFIED. THE RESPONSE SHALL BE VOID IF FALSE STATEMENTS ARE CONTAINED IN THIS EXHIBIT.

1. By signature hereon, the Respondent certifies that:

- 1.1. All statements and information prepared and submitted in the response to this RFQ are current, complete and accurate.
- 1.2. Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- 1.3. Respondent understands that all obligations of TPWD under the contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the contract may be terminated by TPWD.
- 1.4. Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- 1.5. Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.
- 1.6. Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment.
- 1.7. Respondent shall have no authority to act for or on behalf of TPWD or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expense or liability of any kind on behalf of TPWD or the State of Texas.
- 1.8. Respondent 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 Proposal or signing it with a false statement shall void the submitted offer or any resulting contracts.
- 1.9. Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither the bidder, nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the Federal antitrust laws, or (2) communicated directly or indirectly the contents of this bid to any competitor or any other person engaged in the same line of business as the respondent.
- 1.10. By signing this RFQ, respondent certifies that if a Texas address is shown as the address of the respondent, respondent qualifies as a Texas Resident Respondent as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.
- 1.11. Pursuant to Texas Government Code, Title 10, Subchapter A, §2155.004(a), Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from TPWD to participate in the preparation of the specifications or solicitation on which this response or contract is based. Under §2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- 1.12. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- 1.13. Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response 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.
- 1.14. **RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TEXAS PARKS AND WILDLIFE DEPARTMENT (TPWD), ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL**

WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND TPWD AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TPWD FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSION OF TPWD OR ITS EMPLOYEES.

- 1.15. Respondent shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Respondent shall notify TPWD in writing of any such damage within one (1) calendar day. Respondent is responsible for the removal of all debris resulting from work performed under the contract.
- 1.16. Under Section 231.006 of the Family Code, the respondent certifies that the individual or business entity named in this RFQ is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 1.17. Respondent agrees that any payments due under the contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
- 1.18. Under Section 669.003 of the Texas Government Code, Respondent certifies that it does not employ, or has disclosed its employment of, any former executive head of the agency. Respondent must provide the following information in the Response.
 - 1.18.1 Name of former executive: _____
 - 1.18.2 Name of state agency: _____
 - 1.18.3 Date of separation from state agency: _____
 - 1.18.4 Position with respondent: _____
 - 1.18.5 Date of employment with respondent: _____
- 1.19. In accordance with Section 2155.4441 of the Texas Government Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- 1.20. Respondent certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity. Entities ineligible for federal procurement are listed at <https://www.sam.gov/portal/public/SAM/>.
- 1.21. Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 1.22. Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 1.23. In accordance with Section 2252.901 of the Texas Government Code, Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.
- 1.24. Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response 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.
- 1.25. Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract.
- 1.26. Respondent represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify TPWD.
- 1.27. Respondent represents and warrants that (1) it does not, and shall not for the duration of the contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify TPWD.
- 1.28. Respondent verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the

Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify TPWD.

Failure to sign the Execution of Response or signing it with a false statement shall void the submitted offer or any resulting contracts.

By submitting this Response, Respondent represents and warrants that the individual submitting this Execution of Response and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response. Failure to sign and return this form will subject the response to disqualification.

| | | | | | | |
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| EMAIL ADDRESS | | | FAX NUMBER | | | |
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| TEXAS IDENTIFICATION NUMBER | | | FEDERAL EMPLOYER IDENTIFICATION NUMBER | | | |

EXHIBIT B – FIRM’S QUALIFICATION FORM

Part I: Qualifications – TPWD Outside Counsel RFQ

Qualifications Questionnaire must be received by TPWD **no later than 2:00 p.m., Central time on February 27, 2024.**

Contact Information

Please enter Counsel/Firm’s primary contact for TPWD regarding RFQ response questions and the lead attorney contact information for each subject matter on which counsel seeks to represent TPWD.

Main Contact Information

- Name of the Firm:**
- Contact Last Name:**
- Contact First Name:**
- Physical Address:**
- Mailing Address:**
- City/Town/State/Zip:**
- Phone Number:**
- Fax Number:**
- E-mail:**

License Information

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| <p>For each subject matter on which counsel seeks to represent TPWD, is the Lead Attorney licensed to practice law in the state of Texas?</p> | <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| <p>If no licensure in Texas, will Lead Attorney become licensed to practice law in Texas?</p> | <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> |

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p>If no, how does Lead attorney qualify to provide TPWD services (for example, counsel will not advise TPWD on Texas law or counsel will designate a Texas licensed attorney within the firm as co-lead counsel.)?</p> | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

Ethics for Contractors and Conflicts of Interest

After diligent internal inquiry, identify any known relationship, either business or personal, which you or a member of your firm has with any TPWD Board member, employee, contractor, or other person or entity. "Relationship" must be considered in its broadest sense or meaning. If aware of none, select "None" below. A comprehensive conflicts check is generally required prior to engagement of any firm selected for engagement. Prior to interviews, candidates may be prescreened for certain conflicts.

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| <p>Please confirm that you have made a diligent internal inquiry for known relationships.</p> | <p><input type="checkbox"/> I Confirm</p> |
| <p>Did you identify any relationships with TPWD Board member, employee, contractor, or other person entity?</p> | <p><input type="checkbox"/> No <input type="checkbox"/> Yes, full description and explanations are provided.</p> |
| <p>Does Counsel have any limitations on providing services contemplated by the "Scope of Services" for the subject matter for which Counsel designated in its response? (For example, Counsel cannot attend TPWD Board meetings in person.)</p> | <p><input type="checkbox"/> No <input type="checkbox"/> Yes, full description and explanations are provided.</p> |
| <p>Does Counsel have any conflicts that must be disclosed to TPWD under the RFQ?</p> | <p><input type="checkbox"/> No <input type="checkbox"/> Yes, full description and explanations are provided.</p> |
| <p>Has Counsel or any attorney in Counsel's organization represented a client before TPWD within six months from the date of your response?</p> | <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| <p>If Yes, what is the nature of the contact with TPWD (please include the month and year contact last occurred).</p> | |
| <p>Is Counsel or any attorney in the organization that is proposed to work on TPWD matters currently registered as a lobbyist under Chapter 305 of the Texas Government Code?</p> | <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> |

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <p>Will Counsel or any attorney in the organization who is proposed to work on TPWD matters likely to be required to register as a lobbyist during the pendency of any engagement with TPWD?</p> | <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| <p>Has any attorney proposed to work on TPWD matters been investigated, sued, or charged with a crime involving any of the following: fraud; dishonesty; theft; breach of professional ethics; campaign contributions, kickbacks or “pay-to-play” arrangements (whether alleged or adjudicated); lobbying violations; ethics violations; or any personal investment or other personal or business involvement concerning an underwriter, an issuer of securities, an investment adviser, a fiduciary institution, an employee benefits plan, an investment company, an investment vehicle, a placement agent, a broker-dealer, an insurer, a real estate transaction, or a lending institution?</p> <p>Counsel must provide description and explanation.</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes, full description and explanations are provided.</p> | |
| <p>Does Counsel/Firm carry professional liability insurance equal to or greater than \$1,000,000? Qualified Counsel/Firm is required to provide Certificate of Coverage to TPWD.</p> | <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| <p>Are any attorneys proposed to work on TPWD matters proposed for debarment or suspension in your firm?</p> | <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| <p>Are any attorneys proposed to work on TPWD matters ineligible or voluntarily excluded from contracting with any federal, State of Texas, or local department or agency.</p> | <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| <p>Is the Lead attorneys performing work under a contract resulting from this RFQ been engaged in the active practice of law for at least five (5) consecutive years prior to the date of responding to this RFQ.</p> | <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| <p>By affirming, you are authorized to submit this response on behalf of the person(s) or entity(ies) named in this Questionnaire.</p> | <p><input type="checkbox"/> I Affirm</p> |
| <p>Please provide your full name and title.</p> | |

EXHIBIT C – KEY PERSONNEL

Key Personnel

PASS / FAIL

Respondent Name: _____

Respondents shall provide a Key Personnel profile – tabbed Exhibit C, **for each** key personnel to be assigned under the resulting contract. *Include all requested information for each key personnel!* Submit one Exhibit C or resume - not to exceed 1 page per person for each key personnel. **Failure to return this exhibit may result in proposal being considered non-responsive.**

Key Personnel:

Full Name: _____

Job Title: _____

Total Years Employed by Respondent: _____ Total Years' Experience (in required service): _____

Qualifications and Experience: _____

Specific Education, Training, Certifications: _____

Personnel - Reference 1:

Company Name: _____

Contact/Title: _____

Phone: _____ Service Period: _____

Roles and Responsibilities: _____

Personnel - Reference 2:

Company Name: _____

Contact/Title: _____

Phone: _____ Service Period: _____

Roles and Responsibilities: _____

EXHIBIT D – TECHNICAL SUBMITTAL

Technical Submittal

90%

Respondent shall submit a Technical Submittal – tabbed Exhibit D, including numbered responses corresponding to each of the following items. ***Failure to provide this information may result in proposal disqualification.***

- 1) Statement of Interest:** Include a Statement of Interest that includes a narrative description of the Outside Counsel firm's unique qualifications. Include in the statement:
 - a. Identify the team members who will be assigned to this contract (including working titles, degrees, certificates, licenses and technical expertise). Describe the roles and responsibilities of each team member and why each team member is critical to the success of the overall contract.
 - b. Describe the team's experience in providing the services being requested in this RFQ.
 - c. Also include a statement as to when the team would be available to start work on projects that may be assigned as a result of selection under this solicitation.
 - d. Include a list of at least three (3) recent contracts or projects in the last five years where key members of the project team provided similar services to those described in this RFQ brief description of the services provided relevant to this contract.
- 2) Project Management Approach**
 - a. Outside Counsel firm will need to coordinate closely with RVi, a landscape architecture firm under contract with TPWD. In some ways, Outside Counsel will be acting in a role traditionally described as a sub-consultant to RVi. Describe your approach to this managing your work in close consultation with RVi.
- 3) Problem Resolution** – Include a description of how Outside Counsel proposes to address potential challenges including:
 - a. A description of any administrative and/or physical challenges Outside Counsel anticipates in providing services for this project and the firm's philosophy for resolution.
- 4) Quality Assurance/Quality Control Plan**
 - a. Services requested under this solicitation are on a very short timeline. Describe the measures that Outside Counsel will use to keep the project on track and deliver a quality product in a timely manner to ensure a successful outcome of the project.
- 5) Additional Information**
 - a. Provide any additional information that Outside Counsel believes may better describe its qualifications and/or be of benefit to TPWD.

EXHIBIT E – RESPONSE SUBMISSION CHECKLIST

The following checklist is provided for the convenience of Respondents in their response preparation process. It is not intended to represent an exhaustive list of the mandatory requirements for this RFQ. Respondents must ensure that all mandatory requirements for this RFQ are met, even if they are not included in this checklist. The mandatory documentation must be submitted.

A completed checklist shall not be binding on TPWD’s administrative review for compliance with the mandatory response contents specified in this RFQ. As step one of the evaluation process, TPWD will review all responses to ensure compliance with the mandatory response contents as specified in [Section II, Subsection 4.2](#) of the RFQ and reject any response that does not comply.

All responses must be received by TPWD on or before 2:00 PM (CT) on the date specified in Section II, Subsection 1 of the solicitation. No late responses will be considered.

| Item | Check |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| Response via e-mail to: INFContracting@tpwd.texas.gov | |
| E-mail Subject Line includes solicitation name and RFQ opening date: “RFQ Project No. 1111793, February 27, 2024” | |
| Response cover references “RFQ Project No. 1111793” and includes the name and address of the Respondent. | |
| Mandatory Response Contents | Check |
| Exhibit A – Execution of Response (per Section II, Subsection 4) | |
| Exhibit B – Firm’s Qualification Form (per Section II, Subsection 4) | |
| Exhibit C – Key Personnel (per Section II, Subsection 4) | |
| Exhibit D – Technical Submittal (per Section II, Subsection 4) | |
| Exhibit E – Response Submission Checklist (this checklist) | |
| Addenda – Acknowledge receipt of all addenda issued to this solicitation by returning a signed copy of each addendum (per Section II, Subsection 4) | |

EXHIBIT F – SAMPLE OUTSIDE COUNSEL CONTRACT TEMPLATE

THIS CONTRACT TEMPLATE IS CURRENTLY UNDER REVIEW, MAY BE MODIFIED, AND IS SUBJECT TO FINAL ADOPTION AND APPROVAL BY THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS.

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

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

INDUCEMENTS

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

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

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

AGREEMENT

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

Section 1. Purpose/OAG Approval.

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

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

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

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

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

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

Section 2. OCC Term.

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

Section 3. Obligations of Outside Counsel.

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

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

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

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

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

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

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

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

Section 4. Liability.

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

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

\$ _____ for this OCC Term.

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

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

Section 5. Compensation/Expenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Invoices for Payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7. Termination

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

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

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

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

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

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

Section 8. General Terms and Conditions.

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

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

8.1.2 Responsibility for Employee Costs. Outside Counsel agrees and acknowledges that during the OCC Term, Outside Counsel shall be entirely responsible for the liability and payment for Outside Counsel or Outside Counsel's employees or assistants, of all taxes of whatever kind, arising out of the performance of this OCC. Other than the payments described in this OCC, Outside Counsel agrees and acknowledges that Outside Counsel or Outside Counsel's employees or assistants shall not be entitled to any State benefit on account of the services provided hereunder. Agency shall not be liable to Outside Counsel, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/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.

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

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

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

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

8.6 Written Notice Delivery. Any notice required or permitted to be given under this OCC by one Party to the other Party shall be in writing. Such notice shall be, (i) deemed to have been given immediately if delivered in person to the recipient's address set forth in this Subsection; (ii) two business days from the date shown it was sent by express or priority commercial package

delivery service; or (iii) if sent through the United States Postal Service (postage prepaid) by registered or certified mail with return receipt requested on the date of the USPS certificate of receipt.

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

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

Agency Address

OAG Address

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

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

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

8.8 Conflict of Interest.

8.8.1 Payment Limitations. Neither local funds nor funds appropriated by the General Appropriations Act may be expended to pay the legal fees or expenses of Outside Counsel in representing Agency in any matter if Outside Counsel is representing a plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies. For these purposes, “proceedings seeking monetary damages” do not include actions for tax refunds, compensation for exercise of eminent domain authority, or reimbursement of costs of litigation and attorney’s fees.

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

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

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

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

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

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

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

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

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

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

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

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

SIGNATURES FOLLOW

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

Tax ID#

Approved:

By the Office of the Attorney General of Texas

Texas Attorney General or Designee

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

Addendum A

Scope of Services

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

Addendum B

Rates

Name(s) of Lead Counsel:

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

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

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

OUTSIDE COUNSEL CONTRACT

OAG Contract No. _____

Addendum C

Certifications and Warranties

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

- 1. Delinquent Child Support Obligations.** Outside Counsel certifies that it is not ineligible to receive any grant, loan, or payment under this OCC pursuant to Section 231.006 of the Texas Family Code and acknowledges that this OCC may be terminated and payment may be withheld if this certification is inaccurate.
- 2. Buy Texas.** With respect to any services purchased pursuant to this OCC, and pursuant to Section 21055.4441 of the Texas Government Code, Outside Counsel represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials. This Subsection does not apply to Outside Counsel providing legal services located outside the State of Texas.
- 3. Gift to Public Servant.** Outside Counsel warrants that it has not given, nor does it intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this OCC.
- 4. Franchise Tax.** Outside Counsel certifies that its Texas franchise tax payments are current, or that it is exempt from or not subject to such tax, consistent with Chapter 171 of the Texas Tax Code.
- 5. Outside Counsel License/Conduct.** Outside Counsel certifies that each attorney performing services under this OCC is an attorney in good standing under the laws of the State of Texas or the jurisdiction from which the attorney's representation primarily occurs. Outside Counsel will notify Agency in writing within one business day of any lapse in an assigned attorney's licensed status or any final disciplinary action taken against an assigned attorney. For the Lead Counsel(s) named in Addendum B, Outside Counsel will provide documentation of good standing from the state bar or the licensing authority of the jurisdiction in which the attorney resides and is licensed.
- 6. Debt to State.** Outside Counsel acknowledges and agrees that, to the extent Outside Counsel owes any debt (child support or other obligation) or delinquent taxes to the State of Texas, any payments Outside Counsel may be owed under this OCC may be applied by the Comptroller of Public Accounts toward any such debt or delinquent taxes until such debt or delinquent taxes are paid in full.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIGNATURE FOLLOWS

OUTSIDE COUNSEL

By:

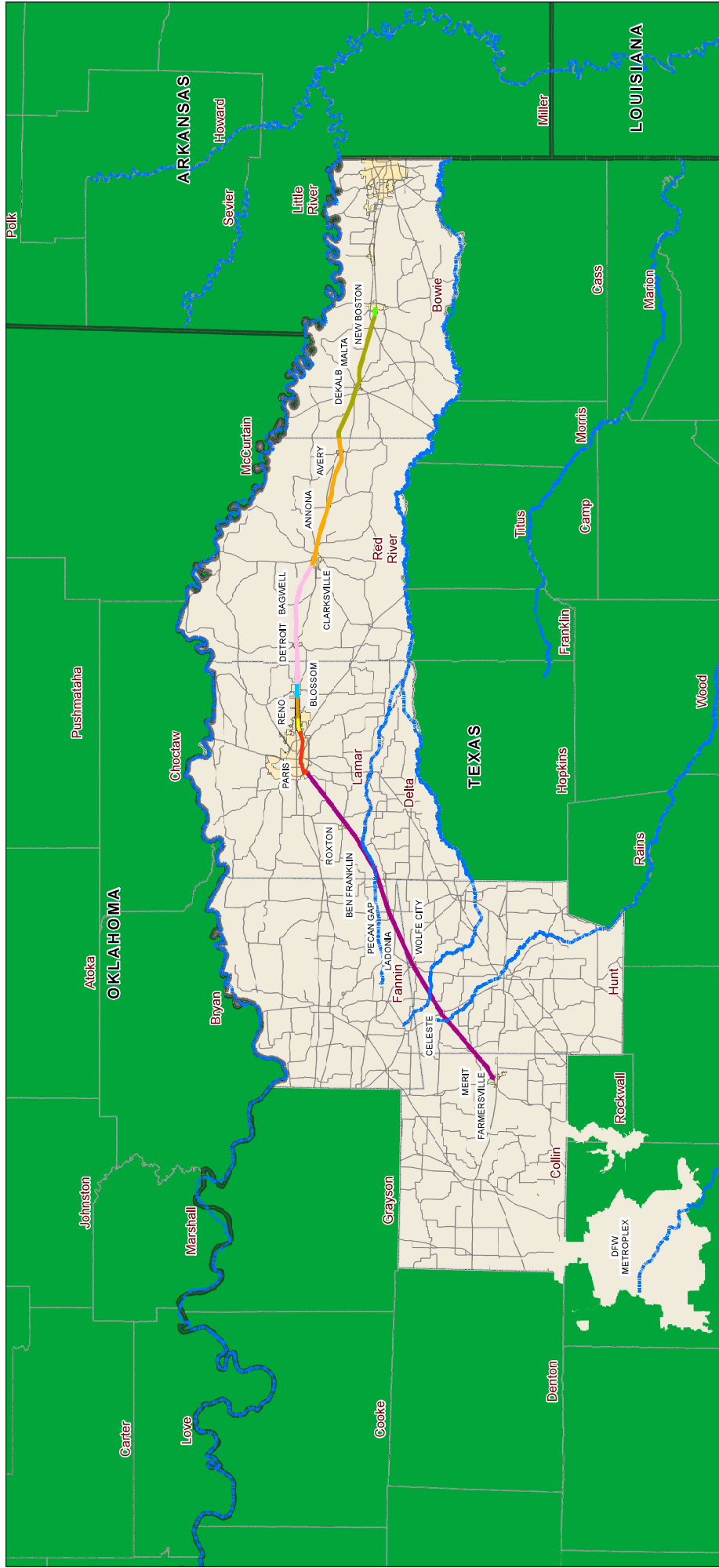
Title:

Date

ATTACHMENT 1 – SITE MAPS

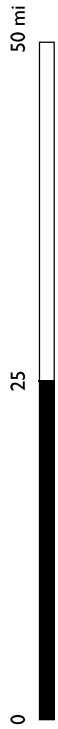


- TRAILS**
- CHAPARRAL RAIL TRAIL
 - TRAIL DE PARIS RAIL TRAIL
 - RENO RAIL TRAIL
 - PRAIRIELAND RAIL TRAIL
 - BLOSSOM RAIL TRAIL
 - GREATER PARIS DEVELOPMENT FOUNDATION RAIL TRAIL
 - CLARKSVILLE, ANNONA, AND AVERY RAIL TRAIL
 - BOWIE CO RAIL TRAIL
 - NEW BOSTON RAIL TRAIL



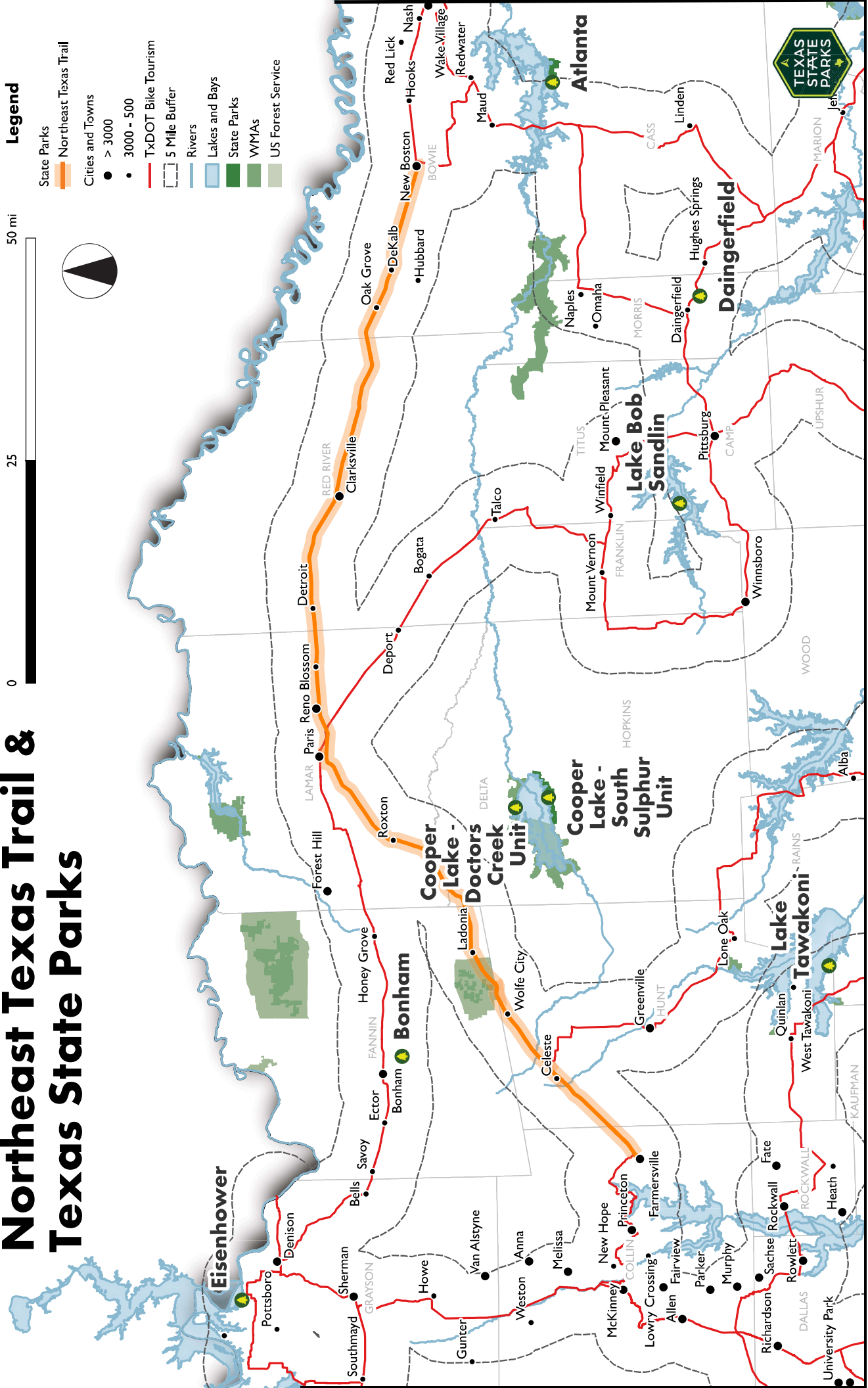
NORTHEAST TEXAS TRAIL

Northeast Texas Trail & Texas State Parks



Legend

- State Parks
- Northeast Texas Trail
 - Cities and Towns
 - > 3000
 - 3000 - 500
 - TxDOT Bike Tourism
 - 5 Mile Buffer
 - Rivers
 - Lakes and Bays
 - State Parks
 - WMAs
 - US Forest Service



ATTACHMENT 2 – SCOPE OF WORK

SCOPE OF WORK (SOW)

TPWD Project ID #1111793

Northeast Texas Trail

Design Project Manager: Lance Utermark

Contract Manager: Lyndsi Sandoval

DOCUMENT PURPOSE

This document is intended to define the specific scope of design services for the above-referenced **Project**. The purpose is to assist the Legal Professional to align their proposal to the specific requirements for this Project. The SOW document becomes a part of the executed **Task Order**, which is then incorporated into the Professional Services Agreement.

PROJECT HISTORY and OVERVIEW

- 2.1. TPWD's mission is to manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations. To help carry out this mission, the agency has established various operational goals, one of which is to increase access to and participation in the outdoors. The results of a feasibility study on the NETT align with this goal as it should provide detailed information to assess the potential for it to become a Texas State Park.

- 2.2. The NETT is the longest trail in Texas. It follows the old Union Pacific and Chaparral railroad rights-of-way for one-hundred thirty-three (133) miles from northeast Dallas to Texarkana. The infrastructure of the NETT was made possible by the creation of the National Trails Act and the Rail Banking process created in 1983. Under this law, the land for construction of the NETT was provided at no cost.
 - 2.2.1. The NETT is rail banked by eight local rail bank entities including:
 - 1) City of Farmersville from Farmersville to Merit
 - 2) Chaparral Rails-to-Trails Inc. from Merit to Paris, (RTC)
 - 3) Greater Paris Development Foundation from Paris to Clarksville
 - 4) City of Clarksville from Clarksville to Annona
 - 5) City of Annona from Annona to Avery
 - 6) City of Avery from Avery to Bowie
 - 7) Bowie County from Bowie County to New Boston
 - 8) New Boston over the New Boston city limits

 - 2.2.2. This trail system serves nineteen (19) rural towns and seven (7) counties linking population centers, community facilities, workplaces, neighborhoods, schools, recreation centers, open space, and cultural/historical areas. The study area includes several northeast Texas counties and cities with a population of more than 47,500. The linear study area is approximately 133 miles in length.

- 2.2.3. Existing conditions of the NETT vary with a mix of rugged terrain and other portions with a smooth hardened surface. Some sections of the trail are paved and include minor amenities such as water stops, fix-it stations and mile markers, but large stretches of the trail remain unimproved with some inaccessible areas due to fallen bridges. The trail remains open for public use with camping allowed on public sites adjacent to the trail right of way.
- 2.3. The Northeast Texas Trail Coalition was formally organized as a 501(c)(3) nonprofit organization in 2012 to advocate for the development and use of the NETT. The Coalition is made up of 17 board members, including a representative from each of the rail-banked agencies. It partners with governments, nonprofit land trusts, and volunteer organizations in all seven Northeast Texas counties to help protect and preserve, plan, construct, and promote the trail. Five of the seven expansions have been the result of the Friends of the Trail partnering with Lamar County, City of Reno, City of Blossom, and the City of Paris to obtain grants under TPWD's Texas Recreational Trails Fund. The Cities of Farmersville, Clarksville, and New Boston have also been successful in obtaining a TPWD grants to construct trails on their sections of the NETT corridor.

The Coalition's website provides a good overview of the NETT. The website can be viewed at: <https://netexastrail.org/>.

- 2.3.1. The selected consultant will work under the direction of TPWD but is expected to coordinate with RVi Planning + Landscape Architecture (landscape architecture firm under contract with TPWD developing the Feasibility Study) and interact with representatives of the NETT Coalition.
 - 2.3.2. The selected consultant will work closely with TPWD project management and RVi to define deliverables for the legal portion of this feasibility study.
 - 2.3.3. This feasibility study will examine the potential uses of properties adjacent to the trail - including options for private investment, public investment, and public / private investment.

PROJECT ASSUMPTIONS / CONSTRAINTS / PARAMETERS / RISKS

Constraints include the budget for services that are allocated for this work and the schedule that requires the study to be concluded and delivered by April 30th, 2024. (This date may need to extend a few weeks or months based on consultation with the selected firm.)

SCOPE OF SERVICES

The **Task Order Proposal** shall be organized in the following Phases.

PHASE ONE SERVICES ONLY:

1. Tasks for this Project will include the following:

TASK 1: PROJECT KICK-OFF, REVIEWS AND ONGOING MANAGEMENT

1.1 Project Initiation

Meet with TPWD project management team (including RVi) to discuss project purpose, project process, review available background documents, identify additional data needed, discuss schedule and foreseeable limitations based on fee and timeline proposed, set milestone dates, **and determine deliverables**. Prepare a summary of items discussed for TPWD staff.

1.2 Technical Review Group

The technical review group will consist of the Consultants, TPWD representatives (infrastructure and State Parks and legal) and Project Manager and, potentially, representatives from the NETT Coalition.

1.3 Milestone Reviews

Near the conclusion of each step, schedule a detailed review discussion of the draft deliverables for each step with TPWD staff prior to proceeding to the next step.

1.4 On-Going Project Management

Provide regular biweekly status updates, progress review meetings, staffing reviews and invoicing throughout the period.

TASK 2: DEVELOP LEGAL DETERMINATION AND FEASIBILITY

2.1 Ownership:

- a. Supplement ownership information provided by TPWD with research as needed regarding properties along the proposed NETT location.
- b. Based on ownership information obtained, prepare general overview of options for TPWD land management and/or acquisition: Ownership, leasing, easements, management agreements, etc.
- c. Provide recommendation scenarios and identify potential risks for the recommended method of acquisition. For instance, if land is owned by railroad, review potential to revert to a railroad at a future date.
- d. Provide risk management strategies summary for recommended scenarios.

2.2 Rail Bank Agreements:

- a. Review existing rail bank agreements (“RBAs”) and related laws to determine process and issues associated with assigning the agreements to TPWD or entering new RBAs.
- b. Prepare a summary of key regulations and requirements applicable to TPWD as the responsible party under Rail Bank Authorities.

2.3 Surface Transportation Board:

- a. Review existing Surface Transportation Board approvals and regulations and determine whether additional approvals are necessary.

2.4 Interlocal Agreements:

- a. Review existing interlocal agreements, if any, among the NETT Coalition, governmental entities, and other parties.
- b. TPWD’s goal is to foster an optimal relationship between these entities and trail operations.

2.5 Federal, State, County, Local Law:

- a. Review other applicable federal, state, and local law.

2.5 Title & Survey:

- a. Review title and survey documentation, identify legal issues associated with existing easements and encroachments, and recommend solutions.
- b. Review existing jurisdictional boundaries or easements (ROW, county, city, utilities, etc.) across the NETT that would be relevant or have an impact on NETT operation and recreation opportunities?
- c. Identify properties with potential chain of title issues (for example, with quitclaim deeds or deeds without warranty), and provide a risk analysis for acquiring any such properties.

TASK 3: RECOMMENDED NEXT STEPS

3.1 Provide recommendations and executive summary for legal process of transferring the NETT trail to Texas Parks and Wildlife Department.

3.2 Present findings to and participate in meetings with TPWD Leadership as needed.

Deliverables for this Scope of Work

| Architecturally-led Projects | | | | | | Req'd | # Copies |
|--------------------------------------|--|--|--|--|--|-------|----------|
| <i>Phase 1 Services (Pre-Design)</i> | | | | | | | |
| Pre-Design | | | | | | | |
| Electronic files | | | | | | | |
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| Hard copies | | | | | | | |
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These deliverables as shown are not reimbursable expenses and are considered part of the Scope of the Work. Any presentation boards will be considered reimbursable expenses.

Schedule for this Scope of Work

The Feasibility Study is due April 30, 2024.

OWNER-PROVIDED MATERIALS (OPM)

TPWD agrees to provide all research included in the following RVi deliverables:

1. Task 02: Context: NETT Overview, Regional Context, and Resources
 - a. Refer to pages 1-4 of attached RVi Task Order Proposal – Part 2
2. Task 03: Site: Inventory and Analysis
 - a. Refer to pages 1-4 of attached RVi Task Order Proposal – Part 2

ATTACHMENT 3 – INSURANCE REQUIREMENTS

A. COVERAGES REQUIRED.

Contractor shall obtain and maintain throughout the Contract term the insurance coverages listed below:

i. Workers' Compensation Insurance:

Coverage to secure the payment of compensation to injured employees as defined in the Texas Worker's Compensation Act.

ii. Employer's Liability Insurance:

Excess Liability and/or Umbrella Liability insurance may be combined in order to meet the following minimum amounts:

- Bodily Injury, \$500,000 per accident;
- Disease, \$500,000 per employee;
- Aggregate policy limit of \$1,000,000.

iii. Commercial General Liability Insurance:

Coverage for claims of personal injury and bodily injury, including accidental death, and property damage which may arise from the performance of the contract. The types of coverage required are: Property Damage, Premises and Operations Hazards, Independent Contractor's, and Contractual Liability. Excess Liability and/or Umbrella Liability insurance may be combined in order to meet the following minimum amounts:

- \$500,000 per occurrence, \$1,000,000 in the aggregate.

iv. Professional Liability Insurance:

Coverage for financial loss resulting from errors, omissions and failure to perform the professional services associated with the Contract. Coverage can be in the form of a claims made or per occurrence policy.

- \$5,000,000 per occurrence, and
- \$10,000,000 in the aggregate.

v. Security and Privacy (Cyber) Liability:

Insurance covering all claims, losses, liabilities, judgments, settlements, lawsuits, regulatory actions, fines and other costs or damages arising out of its performance under Contract, including any negligent or otherwise wrongful acts or omissions by the Business Associate and/or its agents, contractors, partners, employees, Subcontractors, consultants, or assignees.

This includes but is not limited to: any breach of HIPAA, the HIPAA Rules, HITECH, the Omnibus Final Rule or any other law or regulation governing confidentiality of Protected Health Information.

- \$10,000,000 in the aggregate, and
- Additional Insured endorsement on behalf of TPWD, unless policy contains blanket endorsement coverage.

vi. Professional Malpractice/Managed Care Insurance:

Coverage for financial loss resulting from errors, omissions and failure to perform professional services associated with the Contract. Coverage can be in the form of claims made or per occurrence policy:

- \$5,000,000 per occurrence, and
- \$10,000,000 in the aggregate.

vii. Director or Officer Liability Insurance

Coverage in an amount not less than the value of the Contract that is sufficient to protect the interest of the State of Texas in the event an actionable act or omission by a director or officer of Contractor damages the state's interests.

B. POLICIES.

Contractor shall procure and maintain at Contractor's own expense, throughout the term of the Contract and any renewals or extensions thereof, sufficient insurance coverage as may now or hereafter be necessary to insure against any claim(s) for damages based on a violation of Law or arising out of services provided or to be provided to TPWD and the Project under the Contract. Such coverage and limits shall not reduce Contractor's total liability under the Contract. To this end, Contractor shall comply with the following provisions:

- All insurance policies required under this paragraph shall be issued by companies authorized to do business under the laws of the state of Texas, licensed, eligible or registered under Texas law with a rating of A- or better in a financial size category of IV or higher according to A.M. Best Company
- Contractor shall furnish to TPWD evidence of all required insurance, validated by the certificate of insurance. Evidence of insurance shall display TPWD as the Certificate Holder.

C. RENEWAL CERTIFICATES.

A TPWD specific contract number associated with the Contract will be provided to the Contractor at the time of contracting. Contractor shall ensure that renewal certificates of insurance shall:

- Display the associated contract number in the description of operations section of the certificate
- Display required endorsements in the description of operations section of the certificate
- Be submitted electronically via email to the TPWD Contract Manager.
- List only the TPWD specific contract number in the subject line of the email
- Be furnished not more than thirty (30) days following the expiration of current policies
- Display TPWD as the Certificate Holder.

D. NOTICES OF CHANGE.

The Contractor's insurance policies must require the insurer or the insurer's authorized agent to notify TPWD of any cancellation, or material change, other than for non-payment, at least thirty (30) days in advance. The Contractor's insurance policy must require the insurer or the insurer's authorized agent to notify TPWD of any cancellation or material change due to non-payment at least ten (10) days in advance. These notices of changes must reference the TPWD contract number and be made in writing by certified mail to the TPWD Contract Manager at the address shown in the Contract.

E. INSURANCE CERTIFICATE.

Contractor shall provide TPWD with evidence of the insurance coverage required under the Contract. The different coverages requirements listed in section 1, COVERAGES; cannot be added together to meet the aggregate requirements listed. Contractor will submit the certificate to TPWD no later than ten (10) days after award of the Contract. Certificates must bear the contract number of this Contract. If Contractor changes insurers, Contractor

shall give TPWD a new certificate of insurance within ten days. The certificate of insurance shall set out any deductible or self-insured retention amounts for each coverage required.

F. REQUIRED ADDITIONAL PROVISIONS.

All policies of insurance shall include the following provisions:

- Waiver of subrogation in favor of TPWD, its trustees and employees for bodily injury(including death), property damage or any other loss arising from the Contract; and
- The Contractor's insurance must be primary insurance with respect to the TPWD and its trustees and employees.