OUTSIDE COUNSEL CONTRACT
OAG Contract No. 2022-302-0530

This Agreement, including all Addenda (the Addenda are incorporated herein by reference), is hereinafter referred to as the “Outside Counsel Contract” or “OCC.” This Outside Counsel Contract is made and entered into by and between the Office of the Attorney General of Texas (“Agency,” “Attorney General,” or “OAG”) and Keller Lenkner LLC (“Outside Counsel”). The term “Parties” as used in this OCC refers to Agency and Outside Counsel. This OCC is made and entered into with reference to the following facts:

INDUCEMENTS

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

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

AGREEMENT

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

Section 1. Purpose.

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

1.2 Litigation. Outside Counsel is permitted to represent Agency in litigation only as expressly authorized in Addendum A. Outside Counsel must promptly notify Agency of the desirability or likelihood of an appeal arising out of authorized litigation.

1.3 Appellate Matters. Irrespective of any authorization to engage in litigation in this OCC, or in a writing outside of this OCC, OUTSIDE COUNSEL IS NOT AUTHORIZED TO PROCEED ON ANY APPEAL, IN ANY CAPACITY, WHETHER INTERLOCUTORY OR OTHERWISE, WHETHER AS APPELLANT, APPELLEE, RESPONDENT, APPLICANT, OR OTHERWISE, WITHOUT FIRST OBTAINING THE WRITTEN PERMISSION OF THE ATTORNEY GENERAL, FIRST ASSISTANT ATTORNEY GENERAL, OR SOLICITOR GENERAL.

1.4 OAG Review of Outside Counsel Written Statement and Release of Payment. Outside Counsel’s written statement required under Subsection 2254.104(c) of the Texas Government Code will be reviewed and approved by the OAG consistent with Subchapter C of Chapter 2254
of the Texas Government Code, Subsection 402.0212(b) of the Texas Government Code, and Title 1, Chapter 57 of the Texas Administrative Code.

Section 2. OCC Term.

This period of time under which this OCC shall be effective (hereinafter “OCC Term”) shall begin upon execution and, unless terminated earlier pursuant to Section 7 of this OCC, shall terminate on the date the litigation identified in Addendum A is resolved, either by way of settlement or through a final, unappealable judgment, and the distribution of any monetary recoveries to Agency and Outside Counsel are complete.

The OCC Term may not be extended except by amendment pursuant to Section 9.12 of this OCC.

Section 3. Obligations of Outside Counsel.

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

3.2 Staff. Outside Counsel is expected to perform valuable services for Agency, and the method and amount or rate of compensation are specified in Section 5 and Addendum B of this OCC. Outside Counsel staff and employees are expected to perform work of a type commensurate with their professional 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 and Client Communications. Outside Counsel acknowledges that information created or exchanged in the course of representation of a governmental body may be subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, and may be subject to required disclosure in a publicly accessible format pursuant to Section 2252.907 of the Texas Government Code. Outside Counsel will exercise professional judgment and care when creating documents or other media intended to be confidential or privileged attorney-client communications that may be subject to disclosure under the Public Information Act (e.g., invoices where incidental notation may tend to reveal litigation strategies or privileged information). Outside Counsel should mark confidential or privileged attorney-client communications as confidential. This subsection shall not be interpreted to limit Outside Counsel’s duty to provide full disclosure to Agency as necessary in Outside Counsel’s judgment to represent Agency with due professional care or as required by applicable law or disciplinary rules.

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

3.5 Subcontracting Authority. In the event Outside Counsel determines it is necessary or expedient to subcontract in support of any of the performances herein, Outside Counsel may enter into such subcontract(s); provided, however, Outside Counsel shall not subcontract for any of the
legal services to be provided to Agency without obtaining express written approval from Agency. If Outside Counsel purports to enter into a subcontract for legal services 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 or the State of Texas for any direct or indirect costs, damages, or any other expenses related to the subcontract. For all subcontracts entered by Outside Counsel, the Parties agree that all such subcontracts are subject to Section 4 (Liability), Subsection 5.2 (Reimbursement of Expenses), Subsection 5.3 (Subcontractor Payments), and Subsection 6.4 (Supporting Documents; Right-to-Audit; Inspection of Records) of this OCC. Furthermore, if Agency provides express written approval for Outside Counsel to subcontrac for 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 Reasonable Hourly Rates specified in Addendum B unless prior written approval is obtained from Agency. Any subcontracted legal counsel also must comply with Subsections 5.5 (Administrative Staff/Clerks) and 9.8 (Conflict of Interest) of this OCC. In addition, as required by Section 2254.105(4) of the Texas Government Code, all legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of Outside Counsel are subcontractor expenses subject to reimbursement only in accordance with Subchapter C of Chapter 2254 of the Texas Government Code.

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

(i) The lesser of (a) Outside Counsel’s Base Fee multiplied by the reasonable Multiplier, or (b) the maximum Contingent Fee Rate, as a percentage of the amount recovered under this OCC (as set forth in Addendum B) plus

(ii) applicable reimbursable expenses (as set forth in Section 5.2 of this OCC).
Agency shall not be liable to Outside Counsel for any fees or expenses contemplated hereunder unless, and to the extent, a monetary settlement or monetary judgment or award is rendered in the Agency's favor and received by the Agency.

Outside Counsel agrees that any act, action, or representation by either Party, their agents, employees, or representatives that purports to increase the liability of the State of Texas or Agency is voidable by Agency, unless this OCC is amended to modify this limitation of liability, pursuant to Section 9.12 of this OCC. Outside Counsel agrees that the State of Texas and its agencies (other than Agency) shall have no liability arising out of this OCC or the services of this OCC to Outside Counsel.

4.2 Subject to Appropriation or Authorization. The Parties acknowledge and agree that nothing in this OCC will be interpreted to create a future obligation or liability in excess of the funds currently appropriated to Agency. Moreover, Outside Counsel acknowledges and agrees that any payment or reimbursement under this OCC is payable only from funds the Texas Legislature specifically appropriates to Agency for this OCC or the Texas Legislative Budget Board authorizes to be spent by Agency, as applicable under Subsections 2254.108(a) and (b) of the Texas Government Code. In addition, Outside Counsel acknowledges and agrees that no expenses under this OCC may be reimbursed unless Agency and the State Auditor determine that the expenses were reasonable, proper, necessary, actually incurred by Outside Counsel on behalf of Agency, and paid for by Outside Counsel. Further, Outside Counsel acknowledges and agrees that Agency may not pay a contingent fee to Outside Counsel under this OCC until Agency and the Agency's auditor have verified that the hours of work on which the computation under Section 2254.106 is based, as stated in the time and expense records, were actually worked in performing reasonable and necessary services for Agency. Finally, notwithstanding anything to the contrary, Outside Counsel acknowledges and agrees that no payment or reimbursement under this OCC shall be made until final and unappealable arrangements have been made for depositing all recovered funds to the credit of the appropriate fund or account in the state treasury and Agency and the State Auditor have received Outside Counsel's written statement required under Subsection 2254.104(c) of the Texas Government Code.

Section 5. Compensation/Expenses.

5.1 Fees to Outside Counsel. Agency agrees to pay Outside Counsel on a contingency fee basis in consideration of full and satisfactory performance of the legal services under this OCC, as permitted by Subchapter C of Chapter 2254 of the Texas Government Code and described in Addendum B of this OCC. Services for non-attorney timekeeper classifications listed on Addendum B, if applicable, such as paralegal, legal assistant, or patent agent, must be of a substantive legal nature in order to be reimbursable. Outside Counsel agrees to the fee schedule(s) as described in Addendum B.

5.2 Reimbursement of Expenses. Unless this OCC is terminated, Outside Counsel shall finance certain expenses that are approved by the Agency and are incurred in the performance of the legal services described in Addendum A, including but not limited to all consulting and testifying expenses, e-discovery or discovery management services, jury consulting, focus group or other similar expenses, and any other expenses reasonable and customary for litigation similar
in size and complexity as the litigation described in Addendum A. Further, pursuant to Section 3.5 of this OCC, all legal or support services performed by a person who is not an employee of Outside Counsel are to be reimbursed as an expense, and only in accordance with Subchapter C of Chapter 2254 of the Texas Government Code. Provided that such expenses are reasonable and either necessary or advisable, and only as permitted by Section 4.2 of this OCC, Agency will reimburse Outside Counsel for such expenses from the total gross amounts of the monetary recovery, if any, in the litigation described in Addendum A. These expenses shall be deducted from the total gross amounts of the monetary recovery prior to the calculation and payment of Outside Counsel’s fees described in the fee schedule(s) in Addendum B. Outside Counsel understands and agrees that in order to be reimbursed for expenses otherwise payable under this OCC, Section 2254.108 of Subchapter C of Chapter 2254 requires such expenses to be reasonable, proper, necessary, actually incurred on behalf of the Agency, and paid for by Outside Counsel. 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 adopted under Section 660.043 of the Texas Government Code. The Texas Mileage Guide is currently available on the Comptroller of Public Accounts’ website, at: https://fmx.cpa.state.tx.us/fm/travel/travelrates.php.

5.2.2 Meals. Agency will reimburse Outside Counsel for reasonable and necessary meal expenses in accordance with the Textravel guide published by the Texas Comptroller of Public Accounts. Agency will reimburse Outside Counsel at the allowable rate provided by the Textravel guide 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. The Textravel guide is currently available on the Comptroller of Public Accounts’ website at: https://fmx.cpa.texas.gov/fm/travel/textravel/rates/current.php.

5.2.3 Lodging. Agency will reimburse Outside Counsel for reasonable and necessary lodging expenses. Unless otherwise agreed upon by Agency in writing in advance, lodging or overnight accommodations located within the State of Texas will be reimbursed at the lesser amount of the actual expense or $200.00 per timekeeper, as listed in Addendum B, per night. Unless otherwise agreed upon by Agency in writing in advance, lodging or overnight accommodations located outside the State of Texas 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-class airfare, which includes 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 Outside Counsel's Contingent Fee Rates contemplated in Addendum B. Therefore, Agency will not reimburse Outside Counsel for: routine copying and printing charges; fax charges; routine postage; office supplies; telephone charges unless related to teleconferencing services; local travel (within 20-mile radius of office including mileage, parking, and tolls) 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 will only be reimbursed for actual expenses. Outside Counsel shall not be reimbursed for any mark-up or other overhead costs.

5.3 Subcontractor Payments. Notwithstanding anything to the contrary, Agency will not reimburse Outside Counsel for expenses relating to Outside Counsel's use of subcontractors, except through the Contingent Fee Rates payable under Addendum B. Any subcontractor(s) under this OCC shall directly invoice Outside Counsel for the work performed, and Outside Counsel shall include the expense(s) in its Final Written Statement(s) as identified in Addendum B. The actual work performed by subcontractor(s) shall be specifically identified in the Final Written Statement(s) supported by attached documentation. Outside Counsel shall be solely 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 shall not reimburse Outside Counsel for its expenses relating to legal research, including online 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 agreement, "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 cannot 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 and Written Statement for Payment.

6.1 General. Outside Counsel agrees to submit a Final Written Statement(s) as required by Addendum B of this OCC. Outside Counsel understands and agrees that no payment or reimbursement may be claimed in its Final Written Statement(s) for services performed or expenses incurred in violation of the provisions of this OCC or applicable law.

6.2 Submission of Final Written Statement. Outside Counsel must submit its Final Written Statement(s) under this OCC to Agency at:

General.Counsel@oag.texas.gov
OR
Attn.: General Counsel Division
Office of the Attorney General
Mail Code 074
Post Office Box 12548
Austin, Texas 78711-2548

6.3 Prompt Payment. Payments to Outside Counsel by Agency under this OCC shall be in compliance with applicable state law, including Chapter 2251 and Section 402.0212 of the Texas Government Code and Title 34, Chapter 20, Subchapter F of the Texas Administrative Code.

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

6.4.1 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 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. Specifically, Outside Counsel shall maintain current and complete written time and expense records, distinguished by the specific cause of action as contemplated by Addendum A or Addendum B, that describe in detail the time and money spent each day in performing this OCC, pursuant to Section 2254.104(a) of the Texas Government Code. Outside Counsel acknowledges that its time and expense records are public information and subject to required disclosure under Chapter 552 of the Texas Government Code.

6.4.2 Records Retention. Outside Counsel shall retain, for a period of at least seven (7) years after the later of (1) the expiration or termination of this OCC or (2) the resolution of all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative

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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.

6.4.3 Inspection of Records and Right to Audit. Outside Counsel shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State 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.

6.4.4 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 to the effective date of termination, plus any necessary services to cost effectively wind-up, as provided for in Addendum B.
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.**

7.3.1 **Expenses.** In the event of termination for any reason, Outside Counsel shall no longer have any obligation to pay further expert expenses under Section 5. Agency shall be liable for the reimbursement of all expenses incurred prior to the effective date of termination to the extent provided under this OCC, plus any necessary costs to effectively wind-up.

7.3.2 **Attorney Fees.** In the event of termination pursuant to section 7.2, and subject to Section 4 of this OCC, Agency shall not be liable for payment of any attorneys' fees under this OCC (or under a quantum meruit or any other legal theory), provided, however that the Agency shall be responsible for reimbursement of any expenses duly incurred by Outside Counsel to the extent provided by the terms and conditions of this OCC to the effective date of termination. In such case reimbursement for services rendered shall not exceed the Base Fee calculation in Addendum B.

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

7.4 **Remedies.** Notwithstanding any exercise by Agency of its right of early termination pursuant to this Section 7, Outside Counsel shall not be relieved of any liability to Agency for damages due to Agency by virtue of any breach of this OCC by Outside Counsel or for amounts otherwise due Agency by Outside Counsel.

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

**Section 8. Certifications of Outside Counsel**

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

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

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

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

8.5 Outside Counsel License/Conduct. Outside Counsel certifies that each attorney performing services under this OCC is an attorney in good standing under the laws of the State of Texas or the jurisdiction 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. An attorney that is not licensed by the State Bar of Texas may not provide legal services and advice concerning Texas law.

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

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

8.8 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), 669.003 (Contracting with Executive Head of State Agency), 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.

8.9 Does not Boycott Israel. Pursuant to Section 2271.002 of the Texas Government Code, Outside Counsel certifies, by executing this OCC, that either (i) Outside Counsel meets the 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 and will not boycott Israel during the term of this OCC. Outside Counsel agrees to take all necessary steps to ensure the foregoing certification remains true during the term of this OCC.

8.10 Prohibited Companies. Outside Counsel certifies, by executing this OCC, that neither Outside Counsel, nor any subcontractor of Outside Counsel, is a company under Texas Government Code section 2252.152 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.

8.11 Limitation on Abortion Funding. Outside Counsel acknowledges and agrees that, under article IX, section 6.24 of the General Appropriations Act, 87th Leg., R.S. (2021), 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.

8.12 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 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.

8.13 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.

8.14 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

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of separation from the Agency, the position held with Outside Counsel, and the date(s) of employment with Outside Counsel.

8.15 No Conflicts of Interest. In addition to the conflict-of-interest requirements of Section 9.8 below, Outside Counsel represents and warrants that the provision of services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

8.16 Prior Disaster Relief Contract Violation. Under Section 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.

8.17 Does not Discriminate Against Firearm and Ammunition Industries. Outside Counsel verifies that: (1) it does not, and will not for the duration of the OCC, 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 this OCC. If circumstances relevant to this provision change during the course of this OCC, Outside Counsel shall promptly notify OAG.

8.18 Does not Discriminate Against Energy Companies. Outside Counsel represents and warrants that: (1) it does not, and will not for the duration of the OCC, boycott energy companies or (2) the certification required by Section 2274.002 of the Texas Government Code does not apply to this OCC. If circumstances relevant to this provision change during the course of the contract, Outside Counsel shall promptly notify OAG.

8.19 COVID-19 Documentation. Pursuant to Texas Health and Safety Code, Section 161.0085(c), a business in this state may not require a customer to provide any documentation certifying the customer’s COVID-19 vaccination or post-transmission recovery on entry to, or 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.

8.20 Critical Infrastructure Affirmation. To the extent applicable and pursuant to 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.

Section 9.  General Terms and Conditions

9.1 Independent Contractor. Outside Counsel agrees and acknowledges that during the OCC Term, Outside Counsel and Outside Counsel’s subcontractors are independent contractors of Agency or the State of Texas and are not employees of Agency or the State of Texas.
9.1.1 Outside Counsel will be solely and entirely responsible for its acts and the acts of its agents, employees, subcontractors, and representatives in the performance of this OCC.

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

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

9.3 Survival. The obligations of Outside Counsel shall survive the termination or expiration of this OCC.

9.4 Copyright/Intellectual Property. Outside Counsel shall take reasonable measures to protect Agency from material risks of Agency liability known to Outside Counsel for 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 of any claim of copyright, patent, trade secret, or other intellectual property infringement arising out of services under this OCC.

9.5 Media Releases or Pronouncements. Outside Counsel understands that Agency does not endorse any vendor, commodity, or service. Outside Counsel, its employees, representatives, agents, or subcontractors may not issue or otherwise participate in or contribute to any media release, advertisement, social media post, publication, news article, discussion panel, interview, educational publication or presentation, or public pronouncement that pertains to this Contract or the services or project to which this Contract relates or that mentions the OAG without the prior written approval of the OAG.

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

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

Keller Lenkner LLC  
150 N. Riverside Plaza, Suite 4100  
Chicago, IL 60606

9.6.2 OAG's Address. The addresses for the OAG for all purposes under this OCC and for all notices hereunder shall be:

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

9.7 Dispute Resolution.

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

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

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

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

9.7.5 The submission, processing, and resolution of Outside Counsel’s claim is governed by Title 1, Chapter 68 of the Texas Administrative Code adopted by the OAG pursuant to Chapter 2260, as currently effective, hereafter enacted, or subsequently amended, shall govern.

Outside Counsel Contract  
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9.8 Conflict of Interest.

9.8.1 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.

9.8.2 In addition to the ongoing conflict of interest requirements included in Sections 9.8.3 and 9.8.4 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.

9.8.3 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 any actual or potential conflict with respect to Agency or the State of Texas.

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

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

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

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

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

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

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

9.14 Insurance Required Outside Counsel certifies that it presently maintains malpractice insurance in an amount not less than $500,000.00 or the amount specified in Section 4.1 of this OCC, whichever is more.

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 in the event any amount of malpractice insurance is canceled. Outside Counsel also agrees to furnish to Agency certified copies of such insurance policies when requested. Outside Counsel agrees that no claim by Agency and the State of Texas for damages resulting from breach of Outside Counsel’s duties to Agency under this OCC shall be limited to the amount of malpractice insurance maintained by Outside Counsel.

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

Keller Lenkner LLC

Office of the Attorney General of Texas

[Signature]
Ashley Keller
Partner

[Signature]
Attorney General Ken Paxton

2/13/2022 | 6:18 PM CST
Date

02-14-2022
Date
OUTSIDE COUNSEL CONTRACT

OAG Contract No. 2022-302-0530

Addendum A

Services

Outside Counsel will represent the State of Texas in all aspects of litigation brought against Meta Platforms, Inc, and any related parent companies, subsidiaries, affiliates, agents or contractors (the "Meta Related Parties") for violations of the Texas Deceptive Trade Practices Act and Chapter 503 (Biometric Identifiers) of the Tex. Bus. and Comm. Code (the "CUBI Statute") in relation to, or arising from, the Facebook or any other social media platform, application or software owned, controlled or marketed by Meta Platforms, Inc. and the Meta Related Parties ("Matter") This representation on the Matter may result in one lawsuit and shall include, but is not limited to, advising on litigation strategy, drafting briefs, arguing motions, conducting and reviewing discovery, and handling all other litigation related work up to and including trial.

As part of the work on the Matter, Outside Counsel shall cooperate with the Agency’s attorneys assigned to this Matter and other outside counsel or consultants retained by the Agency.

The parties hereby agree to amend this Addendum A to identify and include the specific cause number of any lawsuit filed hereunder.
OUTSIDE COUNSEL CONTRACT

OAG Contract No.  2022-302-0530

Addendum B

I. Name of Lead Counsel: Ashley Keller and Zina Bash

II. Billing Period and Final Written Statement: Upon conclusion or resolution of the Matter specified in Addendum A, Outside Counsel shall submit one written statement (“Final Written Statement”) to Agency for all applicable fees and expenses that satisfies Subsection 2254.104(c) of the Texas Government Code, rather than billing Agency periodically. The Final Written Statement shall be submitted to Agency no later than 60 days after (a) a settlement of the litigation related to the Matter described in Addendum A is fully executed or (b) a final, unappealable judgment of the litigation related to the Matter described in Addendum A is rendered, whichever is later. Outside Counsel acknowledges that the Final Written Statement is public information under Chapter 552 of the Texas Government Code.

III. Compensation: The parties intend for Outside Counsel to be paid on a contingent fee basis in compliance with Texas Government Code §§ 2254.108–110 and as described below. The hourly rates reflected in Sec. III.B. are provided for calculation purposes, specifically, as identified in Texas Government Code § 2254.106(a). On conclusion of the Matter covered by this OCC, Outside Counsel shall provide Agency with a complete Final Written Statement that describes the outcome of the Matter, states the amount of any recovery, shows Outside Counsel’s computation of the amount of the contingent fee, and contains the final complete time and expense records that describe in detail the time and money spent each day in performing the services related to the Matter, as required by Texas Government Code § 2254.104(c). Notwithstanding the foregoing, throughout the duration of the Matter covered by this OCC, Outside Counsel shall submit monthly written statements to OAG (“Monthly Statements”) which shall include the complete time and expense records that describe in detail the time and money spent each day in performing the services related to the Matter, for that reported month. The Final Written Statement and the Monthly Statements shall include only those time and expense records related to the Matter.

If the litigation related to the Matter described in Addendum A results in either (1) a settlement or (2) a final, unappealable judgment that grants relief in the State’s favor not inclusive of monetary damages, the State will seek a recovery of attorneys’ fees and costs against Meta Platforms, Inc., or any other named parent company or subsidiary from the court, and any recovery awarded by the court shall be the sole contingent compensation paid hereunder to Outside Counsel for the Matter.
A. Fee Calculations and Limitations

Pursuant to Subsection 2254.106(d) of the Texas Government Code, Outside Counsel’s compensation under this OCC for the Matter shall be contingent on a monetary settlement or monetary judgment or award rendered in the Agency’s favor and received by the Agency and in such case is limited to the lesser of:

- Outside Counsel’s Base Fee multiplied by the reasonable Multiplier, or
- A stated Contingent Fee Rate, as a percentage of the amount recovered under this OCC for the Matter.

The following paragraphs establish Outside Counsel’s hourly rates, Base Fee, Multiplier, and Contingent Fee rates, subject to Section 2254.106 of the Texas Government Code, for purposes of calculating Outside Counsel’s compensation under this OCC for the Matter. Notwithstanding anything to the contrary, a payment to Outside Counsel under this OCC for the Matter shall be paid and limited in accordance with Subchapter C of Chapter 2254 of the Texas Government Code.

B. Hourly Rate, Base Fee and Multiplier

1. Reasonable Hourly Rates

Pursuant to Subsection 2254.106(a), the following reasonable hourly rates for work performed by an attorney or paralegal who performs legal or support services under this OCC for the Matter, which are based on the reasonable and customary rate in the relevant locality for the type of work performed and on the relevant experience, demonstrated ability, and standard hourly billing rate, if any, of the person performing the work, shall apply:

- Attorney—Partner, Shareholder, and/or Attorney with 9+ years of litigation experience $945 per hour
- Attorney — Of Counsel, Senior Associate, and/or Attorney with 6+ years of litigation experience $650 per hour
- Attorney—Associate (but not Senior Associate) $475 per hour
- Attorney - Document Review Specialists $275 per hour
- Paralegals including eDiscovery Professionals $200 per hour

Outside Counsel shall provide to Agency, a schedule of all attorneys or paralegals that perform services under this OCC which indicates the name of the attorney or paralegal, their classification or years of experience, and their current billing rate under this OCC. Outside Counsel shall update the schedule as necessary and provide any and all updated versions to the Agency. These maximum rates also apply to any authorized subcontracted
legal work, which will be passed on directly as an expense to the Agency at the conclusion of the matter in accordance with Sections Section 3.5 and 5.2 of this OCC and Subsection 2254.106(b).

2. Base Fee

Outside Counsel's Base Fee will be computed by multiplying the number of hours its attorneys or paralegals work in providing legal or support services under the contract times the Reasonable Hourly Rates for the work performed by those attorneys or paralegals, then adding the resulting amounts to obtain the Base Fee. In accordance with Sections 3.5 and 5.2 of this OCC and Tex. Gov't Code 2254.106(b), the computation of the base fee may not include hours or costs attributable to work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of Outside Counsel.

3. Multiplier

The reasonable Multiplier for representation in the Matter is four (4) and is based on the expected difficulties in performing this OCC for the Matter, the amount of expenses expected to be risked by Outside Counsel, the expected risk of no recovery, and any expected long delay in recovery.

C. Contingent Fee Rates

For purposes of the Matter litigation under this OCC, the "Net Recovery" shall mean the total gross amounts of the portion of the monetary recovery received by the Agency on behalf of the State of Texas, if any, through settlement or final, unappealable judgment, relating to the claims identified in Addendum A, less all the expert fees, expenses and costs incurred by Outside Counsel.

The maximum Contingent Fee Rate for the Matter litigation recoverable by Outside Counsel shall not exceed eleven percent (11%) of the total Net Recovery without regard to whether the matter(s) are settled, tried, or tried and appealed.

Subject to the prior approval of the Agency and the terms of this OCC, Outside Counsel may retain additional counsel as subcontractor(s) of Outside Counsel ("Retained Counsel") and any such Retained Counsel shall be paid directly by Outside Counsel under a separate written agreement between Outside Counsel and Retained Counsel. There shall be no increase in the Contingent Fee Rate for Retained Counsel.

Notwithstanding the foregoing, Agency shall have the complete and sole discretion to retain additional outside counsel to represent the State in the
litigation identified in Addendum A. In such case, the total contingency fee cap across all retained outside counsel shall not exceed the statutory cap provided for in section 2254.106 of the Government Code, and all attorneys' fees and expenses shall be paid from this cap.