

**CONSULTING SERVICES CONTRACT EXAMPLE
BETWEEN
THE OFFICE OF THE ATTORNEY GENERAL
AND
NAME OF CONTRACTOR**

**STATE OF TEXAS
TRAVIS COUNTY**

OAG CONTRACT NO. 16-XXXXXX

THIS CONTRACT is entered into by and between the Office of the Attorney General (hereinafter referred to as "OAG") and NAME OF CONTRACTOR. (hereinafter referred to as "Contractor") and collectively referred to as the Parties. The Parties, in consideration of their respective promises, agreements, and covenants contained and recited herein, hereby agree to the mutual obligations and performances described in this contract as follows.

SECTION 1. CONTRACT PERIOD. This contract shall commence on the date the final signature is affixed hereto and shall terminate on August 31, 2017, unless the OAG agrees in writing to extend that date for the purpose of negotiating the Indirect Cost Allocation Plan approval with United States Department of Health & Human Services, Region VI, DCA (hereinafter referred to as "DHHS"). This contract may be extended upon the mutual agreement of the parties to be evidenced in writing prior to the expiration date of the initial term.

SECTION 2. AUTHORITY. The performances required of Contractor by this contract constitute "consulting services" and are governed by the requirements applicable to consulting services or major consulting services as described and defined in the TEX. GOV'T CODE §§2254.021- .040.

SECTION 3. SERVICES TO BE PERFORMED BY CONTRACTOR. Contractor shall perform the consulting services in accordance with the terms and conditions herein:

Scope of Services will be defined as mutually agreed upon by the parties.

SECTION 4. SCHEDULE FOR PERFORMANCE OF SERVICES BY CONTRACTOR.

4.1 Time Is of the Essence. Time is of the essence in the rendering of services required by this contract. *[The schedule will be determined after the parties have agreed to the scope and terms of the contract.]*

SECTION 5. INCORPORATED DOCUMENTS. The following documents may describe the required performances in more detail and are incorporated herein in their entirety in descending order of precedence:

5.1 The Request for Proposal dated MONTH DATE, YEAR, issued by the OAG; and

5.2 The Proposal to Provide Services dated **MONTH DATE, YEAR**, issued by the Contractor.

Any conflict between the incorporated documents will be resolved according to the order of precedence. To the extent of any conflict between the terms of this contract and the incorporated documents, the terms of this contract will control.

SECTION 6. COMPENSATION. The total amount of compensation to be paid Contractor in consideration of full, satisfactory and timely performance of all its obligations as set forth in this agreement shall not exceed _____ (\$) **DOLLARS**. The parties agree to abide by the following payment schedule.

6.1 Indirect Cost Allocation Plan. Upon receipt and approval by the OAG of the completed FY 2015 Indirect Cost Allocation Plan with proposed fixed FY 2017 Indirect Cost Allocation Rates, including the submission of the plan to DHHS, the Contractor shall submit an invoice in an amount not to exceed _____ (\$) **DOLLARS**.

6.2 Executed Negotiation Agreement from DHHS. Upon receipt and acceptance by the OAG of an executed Negotiation Agreement from DHHS for the fixed FY 2017 Indirect Cost Allocation Rates, including the delivery of the final approved Indirect Cost Allocation Plan for FY 2015 to the OAG, the Contractor shall submit an invoice in an amount not to exceed _____ (\$) **DOLLARS**.

6.3 Final Report for Standardized Legal Billing Rates. Upon receipt and acceptance by the OAG of the completed final report on the updated standardized Legal Billing Rates for FY 2017, including the delivery of the final updated standardized Legal Billing Rates Report and the detailed report reconciling FY 2015 legal billing rates with actual costs, the Contractor shall submit an invoice in an amount not to exceed _____ (\$) **DOLLARS**.

The form of any invoice submitted under this section must comply with the specifications of the Attorney General and must be submitted in the manner and with the documentation the Attorney General may require.

Upon acceptance of Contractor's performance and receipt of an acceptable invoice required to be submitted under this section, the OAG shall pay the Contractor said amount in accordance with Chapter 2251 of the Texas Government Code. It is the policy of the OAG to make payment on a properly prepared and submitted invoice within thirty (30) days of any final acceptance of performance.

SECTION 7. TERMINATION.

7.1 Termination for Convenience. The OAG reserves the right to terminate the contract at any time for convenience, in whole or in part, by providing thirty (30) calendar days advance written notice of termination. In the event of such a termination, the contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The OAG shall be liable for payments limited only to the portion of work authorized by the OAG in writing and completed prior to the effective date of termination, provided that the OAG shall not be liable for any work performed that is not acceptable to the OAG and/or does not meet contract requirements. All work products produced by the OAG Contract No. 16-XXXXX

Contractor and paid for by the OAG shall become the property of the OAG and shall be tendered upon request.

7.2 Termination for Breach. The OAG may, by written notice of material breach to the contractor, terminate this contract, in whole or in part, if the contractor fails to perform in full compliance with the contract requirements. Upon receipt of written notice to terminate, the contractor shall promptly discontinue all services affected (unless the notice directs otherwise) and shall deliver or otherwise make available to the OAG, all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the contractor in performing this contract, whether completed or in progress.

7.3 Termination for Funding. All obligations of the OAG are subject to the availability of legislative appropriations and, for federally funded procurements, to the availability of federal funds applicable to this procurement. The parties acknowledge that funds are not specifically appropriated for this Contract and the OAG's continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the OAG for each particular appropriation period. The OAG will use all reasonable efforts to ensure that such funds are available. The parties agree that if future levels of funding are not sufficient to continue operations without any operational reductions, the OAG, in its discretion, may terminate this Contract, either in whole or in part. In the event of such termination, the OAG will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The OAG shall make best efforts to provide reasonable written advance notice to Contractor of any such termination. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. OAG shall be liable for payments limited only to the portion of work the OAG authorized in writing and which the Contractor has completed, delivered to the OAG, and which has been accepted by the OAG. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

7.4 Ownership of Work Product. Upon the completion, expiration, or termination of the Contract, Contractor grants and assigns to the OAG the exclusive ownership of all works in connection with this contract. Nothing contained herein is intended nor shall it be construed to confer to the OAG any rights to Contractor's proprietary software.

7.5 Dispute Resolution.

7.5.1 The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by the OAG and by Contractor to attempt to resolve any claim for breach of contract made by the Contractor:

7.5.1.1 Contractor's claims for breach of this contract 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, Contractor shall submit written notice, as required by subchapter B, to Ms. Norma Flores, Director of Budget, or her designate. Said notice shall specifically state that the provisions of Ch. 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Contractor and the OAG otherwise entitled to notice under the parties' contract. Compliance by Contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

7.5.1.2 The contested case process provided in Chapter 2260, subchapter C, of the Government Code is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by OAG if the parties are unable to resolve their disputes under subsection 7.4.1.

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

7.5.2 The submission, processing, and resolution of Contractor's claim are governed by the published rules (1 TAC §68 et seq.) adopted by the OAG pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

7.5.3 Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Contractor, in whole or in part.

SECTION 8. CERTIFICATIONS OF CONTRACTOR. By agreeing to and signing this Contract, Contractor hereby makes the following certifications and warranties:

8.1 Delinquent Child Support Obligations. Under Section 231.006 of the Texas Family Code, Contractor certifies that it and/or the business entity named in this Contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

8.2 Contractor Participation in Development of Criteria. The Contractor certifies that neither it nor its employee(s), agents, or representatives have participated in the development of specific criteria for the award of this contract and/or in the selection of the successful offeror of this contract.

8.3 Previous Employment with the Office of the Attorney General. Contractor certifies that none of the people who will perform the services under this Contract have been employed by the OAG within the previous twelve (12) months.

8.4 Conflict of Interest. Contractor certifies that neither it nor the personnel or entities employed in rendering services under this Contract have, nor shall they knowingly acquire, any interest that would be adverse to or conflict in any manner with the performance of Contractor's obligations under this Contract.

8.5 Gifts to Public Servant. Contractor warrants that it has not given nor intends 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 Contract.

8.6 Corporate Franchise Tax. By signing this Contract, Contractor certifies that its Texas franchise tax payments are current or that it is exempt from, or not subject to, such tax.

8.7 No Claims. Contractor certifies that Contractor does not have any potential or existing claims against or unresolved audit exceptions with the State of Texas or any agency of the State of Texas.

8.8 Debt to State. Contractor acknowledges and agrees that, to the extent Contractor owes any debt
OAG Contract No. 16-XXXXX Page 4 of 9

or delinquent taxes to the State of Texas, any payments Contractor is owed under this Contract will be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.

8.9 Buy Texas. With respect to all services, if any, purchased pursuant to this Contract, Contractor 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 in a comparable period of time when compared to non-Texas products and materials.

8.10 Effect of Certifications. The Contractor, by signing this contract, certifies that the individual or business entity named in this 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.

SECTION 9. GENERAL TERMS AND CONDITIONS.

9.1 Independent Contractor/Indemnification. Contractor agrees and acknowledges that during the existence of this contract, it acts as a consultant and is furnishing services in the capacity of an independent contractor. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, and representatives during the performance of this agreement. Contractor agrees to indemnify and hold harmless the OAG, its employees and designees, and the State of Texas from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses, which arise from or are occasioned by the negligence, misconduct, or wrongful act or omission of contractor, its employees, representatives, agents or subcontractors in its performance under this contract.

In the event of loss, damage, or destruction of any property of the OAG due to the negligence or misconduct, wrongful act or omission on the part of the Contractor, its employees, agents, representatives, or subcontractors, the Contractor shall indemnify the Attorney General and pay the full cost of either repair, reconstruction, or replacement of the property, at the Attorney General's election. Such cost shall be due and payable by the Contractor within ten calendar days after the date of the Contractor's receipt from the Attorney General of a written notice of the amount due.

The Contractor shall indemnify and hold harmless the OAG against any claim of copyright or patent infringement arising in connection with the performances required of the Contractor pursuant to this contract. The Contractor shall be liable to pay all costs, damages, and attorneys' fees incurred by the OAG as a result of any claim for the infringement of any United States or internationally protected patents or copyrights arising from the use by the Contractor or the OAG or its employees or designees of any equipment, materials, information, or ideas employed or furnished by the Contractor in connection with the performances called for in this contract. The Contractor and the OAG agrees to furnish timely written notice to each other of any such claim of copyright or patent infringement.

9.2 Assistants. The Contractor agrees that any person hired or engaged by the Contractor and who assists in performing the services agreed to herein shall not be considered employees or agents of the OAG. The Contractor shall be responsible for any payments and other claims due such persons. Further, the Contractor agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The OAG shall not be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance and/or workers' compensation.

9.3 Confidentiality of Information and Records. During the term of this contract, as well as thereafter, Contractor agrees to keep all information obtained from the OAG - if such information is not otherwise open to the public under Chapter 552, Texas Government Code -- confidential, and will not use any such information to the detriment of the OAG or its officers, employees, or clients at any time. All information in whatever form prepared by the Contractor for the OAG pursuant to this contract shall not be disclosed by Contractor without the prior written approval of the OAG.

9.4 Assignment.

9.4.1 Contractor Assignment. Contractor may not assign this Contract or any of its rights or obligations hereunder (including, without limitation, rights and duties of performance) to any third party or entity, without the prior written consent of the OAG. Any attempted assignment without the OAG's prior written consent is void. The initiation of bankruptcy proceeding by or on behalf of Contractor and/or any involuntarily assignment or other assignment by operation of law shall result in the automatic termination of this Contract.

9.4.2 Antitrust. Contractor hereby assigns to the OAG any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).

9.5 Subcontracting. In the event that the Contractor should determine that it is necessary or expedient to subcontract for any of the performances herein, prior to executing a subcontract, the Contractor shall submit a copy of the proposed subcontract to the OAG and shall obtain the written approval of the OAG for subcontracting the subject performances. The Contractor, in subcontracting for any performances specified herein, expressly understands and agrees that the OAG shall not be liable in any manner to the Contractor's subcontractor(s).

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

9.6 Media Releases or Pronouncements. The Contractor understands that the OAG does not endorse any vendor, commodity, or service. Neither the Contractor, its employees, representatives nor other agents or subcontractors may issue any media release, advertisement, publication, or public pronouncement which pertains to this contract or the services or project to which this contract relates or which mentions the OAG without the prior written approval of the OAG.

9.7 Amendments. This contract may be amended only upon written agreement by the parties.

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

Contractor agrees that the OAG and/or the State do not waive any immunity (including, without limitation, sovereign immunity). Contractor further agrees that any properly allowed litigation arising out of or in any way relating to this Contract and/or any Work Order shall be commenced exclusively in the state district courts of Travis County, Texas. Contractor thus hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the state district courts of Travis County, Texas for the purpose of prosecuting

and/or defending such litigation. Contractor hereby waives and agrees not to assert: (a) that Contractor is not personally subject to the jurisdiction of the state district courts of 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.

9.9 Tex. Gov't Code § 2262.003. Required Contract Provision Relating to Auditing. Contractor understands that acceptance of funds under this contract, acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Contractor will reimburse the State of Texas for all costs associated with enforcing this provision.

9.10 Signatory. The Parties agree the signatories to this Contract are acting in their official capacities. Having agreed to the terms herein, the undersigned signatories hereby represent and warrant that they have actual or delegated authority to sign this Contract.

9.11 Severability/Interpretation. The fact that a particular provision is held under any applicable law to be void or unenforceable will in no way affect the validity of other provisions and the Contract will continue to be binding on both parties. Any provision that is held to be void or unenforceable will be replaced with language that is as close as possible to the intent of the original provision. Any vague, ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Contract.

9.12 Written Notice Delivery

9.12.1 Any notice required or permitted to be given under this Contract by the OAG to the Contractor shall be in writing and shall be deemed to have been given immediately if delivered by fax, e-mail, or in person to the Contractor as set forth in this section. Any notice required or permitted to be given under this Contract by certified mail return receipt requested shall be deemed to have been given on the date of attempted or actual delivery to the recipient if addressed to the receiving party at the address specified in this section.

9.12.2 Contractor's Mailing Address. The mailing address of the Contractor for all purposes under this Contract and for all notices hereunder shall be:

NAME OF CONTRACTOR
STREET ADDRESS
CITY, STATE ZIP CODE

9.12.3 OAG's Address. The address of the OAG for all purposes under this Contract and for all notices hereunder shall be sent by registered or certified mail with return receipt to:

Office of the Attorney General
Post Office Box 12548
Austin, Texas 78711-2548
Attn: Ms. Norma Flores

9. **Insurance**

Contractor represents and warrants that it will, within ten (10) calendar days of executing this agreement, provide *the OAG* with current certificates of insurance or other proof acceptable to the OAG. If Contractor submits a commitment for insurance, an award of this Contract to the Contractor may, in the sole discretion of the OAG, be revoked if actual proof of insurance is not received by the OAG within ten (10) calendar days of the Contractor being notified of the award.

The insurance requirements for this contract are as follows:

Comprehensive General Liability Insurance with a minimum limit of \$1,000,000 for each occurrence, an aggregate of \$2,000,000, Medical Expense(each person) of \$5,000

Personal Injury and Advertising Liability of \$1,000,000, Products/Completed Operations aggregate Limit of \$2,000,000 and Damage to Premises Rented to You of \$50,000.

Automobile Liability Insurance for all owned, non-owned and hired vehicles with minimum limits of Bodily Injury of \$250,000 for each person and \$500,000 for each occurrence and Property Damage Limits of \$100,000 for each occurrence; and

Workers' Compensation coverage as required by law with statutory limits for the State of Texas as follows: Employer's Liability of \$1,000,000, Disease – Each Employee of \$1,000,000, and Disease – Policy Limit of \$1,000,000

- a. All policies shall contain a waiver of subrogation against the OAG, its officers and employees, for bodily injury (including death), property damage or any other loss.
- b. Proof of, or commitment for, the insurance coverage detailed above shall be presented in the form acceptable to the OAG at the time of contract execution. **THE CONTRACTOR SHALL NOT COMMENCE ANY WORK UNDER THIS CONTRACT UNTIL PROOF OF INSURANCE, IN THE FORM ACCEPTABLE TO THE OAG, HAS BEEN RECEIVED BY THE OAG.** The insurance coverage shall be written by a company licensed to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the OAG, and Contractor shall not cause said insurance coverage to be canceled nor permit any insurance to lapse. Failure to maintain such coverage may void the Contract. The proof of, or commitment for, the insurance and the insurance policies shall contain a provision that coverage afforded under the policies will not be modified, canceled or allowed to expire until at least thirty (30) calendar days prior written notice has been given to the OAG.
- c. Contractor shall provide the OAG with immediate written notice of cancellation by the insurer of any required coverage or a material change by Contractor or the insurer that affects the coverage. In the event that any of the coverage is canceled by the insurer for any reason, the Contractor shall obtain replacement coverage acceptable to the OAG no later than fifteen (15) OAG Business Days after the cancellation of coverage. If the Contractor fails to

maintain the required coverage, the OAG shall have the right (without the obligation to do so) to secure same in the name and for the account of the OAG, in which event the Contractor *shall pay the cost* thereof.

- d. If any of the insurance coverage detailed above are required to remain in force after the completion of all services, an additional certificate evidencing continuation of such coverage shall be submitted at the same time that Contractor submits its final invoice for payment under the Contract.

SECTION 10. BACKGROUND PROVISION. Pursuant to Texas Government Code Sections 411.127-1271, the OAG may elect to obtain criminal history information from the Texas Department of Public Safety, the Federal Bureau of Investigation, or another law enforcement agency about any person or employee of an entity that proposes to enter into a contract, or who has entered a contract, to supply goods and services to the agency. This authorization includes subcontractors and their employees. If requested, the vendor shall provide identifying data necessary to facilitate the performance of initial and periodic criminal background checks on its employees and the employees of any subcontractor. In its sole discretion, the OAG may reject the assignment or restrict the access of personnel on the basis of reported criminal history, and is prohibited by law from disclosing the results of any criminal background check to the vendor.

IN WITNESS HEREOF, THE PARTIES HAVE SIGNED AND EXECUTED THIS CONTRACT IN MULTIPLE COUNTERPARTS.

OFFICE OF THE ATTORNEY GENERAL

NAME OF CONTRACTOR

NAME
Deputy AG for Administration

NAME OF REPRESENTATIVE,
TITLE OF REPRESENTATIVE

Date:

Federal Tax Identification No. _____
Date: