

# RAILROAD COMMISSION OF TEXAS

Outside Counsel Contract No. 455-21-1014

**THIS CONTRACTUAL AGREEMENT** ("Outside Counsel Contract" or "OCC") is made and entered into by and between the State of Texas by and through the **Railroad Commission of Texas** ("Agency") and **Marcella Spraggins** ("Outside Counsel") (individually "Party", collectively "Parties"). The term "Parties" as used herein refers to the Agency and the 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; and

**WHEREAS**, through 1 Texas Administrative Code §57.2 and Texas Government Code §402.0212(a), Agency is granted exemption of obtaining approval from the OAG to contract for outside legal services; and

**WHEREAS**, Outside Counsel desires to provide legal services to Agency.

## AGREEMENT

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

### Section 1

#### **Purpose.**

**1.1.** The purpose of this OCC is for Outside Counsel to provide legal services to Agency, as described in Addendum A. Outside Counsel shall not represent agency in any litigation unless Addendum A specifically and unambiguously authorizes litigation in a particular matter.

### Section 2

#### **OCC Term.**

**2.1.** This OCC shall commence on 2/9/2021, and shall terminate on 2/8/2022, ("OCC Term"), unless terminated earlier pursuant to Section 7 of this OCC. The OCC Term may not be extended except by written amendment pursuant to Section 9 of this OCC.

### Section 3

#### **Obligations of Outside Counsel.**

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

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

**3.3. Public Information and Client Communications.** Outside Counsel acknowledges that information created or exchanged in the course of representation of a governmental body may be subject to Texas Government Code Chapter 552 (Texas Public Information Act) and may be subject to required disclosure in a publicly accessible format pursuant to Texas Government Code §2252.907. 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 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 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 or the State of Texas for any direct or indirect costs, damages, or any other expenses related to the subcontractor. 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), Subsection 6.2 (Subcontractor Invoices), and Subsection 6.4 (Supporting Documents; Right-to-Audit; Inspection of Records) of this OCC. Furthermore, if Outside Counsel elects to enter into a subcontract for any legal services, then the Parties agree that the Agency shall not be liable to Outside Counsel for any hourly rates or rate ranges greater than the highest hourly rate or rate range specified in Addendum B unless prior written approval is obtained from the Agency. Any subcontracted legal counsel must comply with Subsection 9.8 (Conflict of Interest) of this OCC.

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

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

#### **Section 4**

##### **Liability.**

**4.1. Limitation of Liability.** The Parties stipulate and agree that the State of Texas and Agency's total liability to Outside Counsel, including consideration for the full, satisfactory and timely performance of all its duties, responsibilities and obligations, and for reimbursement of all expenses, if any, as set forth in this OCC or other liability arising out of any performance herein shall not exceed: \$24,000.00 for the OCC Term.

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

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

#### **Section 5**

##### **Compensation/Expenses.**

**5.1. Fees to Outside Counsel.** Subject to Title 1, Chapter 57 of the Texas Administrative Code, Agency agrees to pay Outside Counsel in consideration of full and satisfactory performance of the legal services under this OCC. Services for non-attorney timekeeper classifications listed on Addendum B, if applicable, such as paralegal or legal assistant, must be of a substantive legal nature in order to be reimbursable. Outside Counsel agrees to the fee schedule as described in Addendum B.

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

**5.1.2. Mileage.** Agency will reimburse Outside Counsel for reasonable and necessary travel mileage at the per mile rate posted on the Texas Mileage Guide adopted under Section 660.043 of the Texas Government Code. The Texas Mileage Guide is currently available on the Comptroller of Public Accounts' website at: <https://fm.xcpa.state.tx.us/fm/travel/travelrates.php> (as of February 1, 2021).

**5.1.3. Meals.** Agency will reimburse Outside Counsel for reasonable and necessary meal expenses at the current state per diem rate or actual expenses, whichever is less, for each attorney for each day requiring overnight travel. Agency will not reimburse Outside Counsel for the purchase of alcohol.

**5.1.4. 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.

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

**5.1.6. 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.

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

**5.1.8. 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.

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

**5.3. Legal Research.** Agency may reimburse Outside Counsel for its reasonable and necessary expenses relating to legal research, including online legal research. While Agency should be paying Outside Counsel to apply the knowledge and expertise for which it was hired, and not paying Outside Counsel to obtain that knowledge through extensive legal research, Agency understands that situations arise that justify extensive research on how best to proceed in order to achieve a desired result. Therefore, the need for extensive legal research will be addressed on a case-by-case basis by Outside Counsel and Agency.

**5.4. 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, or 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 Agency cannot approve payment of any invoice if Agency 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.

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

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

**6.1.2. Billable Time.** Agency will only pay for the services of individuals covered in Addendum B. All times 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.** Outside Counsel must submit invoices to Agency at:

Railroad Commission of Texas  
Accounting- Mail Code 108-3A  
PO Box 12967  
Austin, TX 78711-2967

**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 comply with Texas Government Code Chapters 402 and 2251 and 34 Texas Administrative Code Chapter 20, Subchapter D. Outside Counsel agrees that this OCC shall serve as notice that invoices are automatically in error for purposes of Texas Government Code Chapters 402 and 2251 and 34 Texas Administrative Code Chapter 20, Subchapter D, until Agency has approved the payment of such invoice.

**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, 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.

**6.4.2. 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 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 and 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's property, services performed, and charges, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this OCC, for purposes of inspecting, monitoring, auditing, or evaluating by Agency, the State of Texas, or their authorized representatives. Outside Counsel shall cooperate with auditors and other authorized Agency and State of Texas representatives and shall provide them with prompt access to all such State 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 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.** The Agency has the right to terminate this OCC, in whole or in part, without penalty, by notifying Outside Counsel in writing of such termination prior to the effective date of such termination. Such notification of termination shall state the effective date of termination. In the event of such termination, Outside Counsel shall, unless otherwise mutually agreed upon in writing, cease all services immediately, except such services that are necessary to wind-up, in a cost-effective manner, all services being provided. Subject to Section 4 of this OCC, Agency shall be liable for payments for all services performed under this OCC to the effective date of termination, plus any necessary services to cost effectively wind-up.

**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 Outside Counsel and in any manner, Agency deems appropriate in its sole discretion, Agency is granted the unrestricted right to use, copy, modify, prepare derivative works from, publish, and distribute any component of the information, work product, or other deliverable made the subject of this OCC.

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

**7.5. Termination by Outside Counsel.** Consistent with applicable rules of professional conduct, Outside Counsel may terminate this OCC upon five (5) business day 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 Texas Family Code §231.006 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 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 Texas Tax Code Chapter 171.

**8.5. Outside Counsel License/Conduct.** Outside Counsel certifies that each attorney performing services under this OCC is an attorney in good standing under the laws of the State of Texas or the jurisdiction where the representation occurs. Outside Counsel will notify Agency 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, Texas Government Code §§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).

**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

**9.3. Survival.** The obligations of Outside Counsel under the following sections and subsections shall survive the termination or expiration of this OCC: 3.3, 4, 5, 6.4, 7.1, 7.3, 7.4, 8.8, 9.7, 9.8, 9.11, and 9.13.

**9.4. Copyright/Intellectual Property.** Outside Counsel shall take reasonable measures to protect Agency from material risks of Agency liability known to Outside Counsel for 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 the Agency does not endorse any vendor, commodity, or service. Outside Counsel, its employees, representatives, agents, or subcontractors may not participate in any media event or issue any media release, advertisement, publication, editorial, article, or public pronouncement that pertains to this OCC or the services or project to which this OCC relates or that mentions the Agency without the prior written approval of the Agency.

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

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

**Notice by US Mail**

Marcy Spraggins

1803 Kendra Cv.

Austin TX 78757

**Notice by Delivery Service**

Marcy Spraggins

1803 Kendra Cv.

Austin TX

**9.6.2. Agency's Address.** The addresses for the Agency for all purposes under this OCC, except as provided by Section 6, and for all notices hereunder shall be:

**Notice by US Mail**

Railroad Commission of Texas

Office of General Counsel

PO Box 12967

Austin, TX 78711-2967

**Notice by Delivery Service**

Railroad Commission of Texas

Office of General Counsel

1701 N. Congress Ave., 10<sup>th</sup> floor

Austin, TX 78701

**9.7. Dispute Resolution.**

**9.7.1.** The dispute resolution process provided for in Texas Government Code Chapter 2260 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 Texas Government Code Chapter 2260, Subchapter B. To initiate the process, Outside Counsel shall submit written notice, as required by Subchapter B, to the Agency's contact. Said notice shall specifically state that the provisions of Texas Government Code 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 Texas Government Code Chapter 2260, Subchapter C.

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

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

**9.8. Conflict of Interest.**

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

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

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

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

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

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

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

**9.12. Amendments.** This OCC, including addenda hereto, may be amended only upon written agreement signed by both 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. **Additional Terms.** Any additional terms agreed to by Outside Counsel and Agency shall be electronically appended. These terms shall not be inconsistent with or contrary to the Contract terms listed above, and nothing in these additional terms or conditions shall remove or modify terms contained in Sections 1-9. In the event of any conflict, ambiguity, or inconsistency between any additional terms and conditions appended electronically hereto and Sections 1-9 of this Outside Counsel Contract, Sections 1-9 shall take precedence and control.

**EXECUTION SIGNATURES.** The Parties agree the Contract and any written Amendments thereto necessary for the consummation of the transaction contemplated by the Contract may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act ("UETA") and any applicable state law. Any document accepted, executed, or agreed to in conformity with such laws will be binding on each Party as if it were physically executed. The Parties to this Contract have electronically executed this Contract which shall be deemed an original. By the signatures below, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective Parties.

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

Railroad Commission of Texas

DocuSigned by:  
Wei Wang  
Wei Wang, Executive Director

2/11/2021  
Date

[Outside Counsel]

DocuSigned by:  
Marcella Spraggins Attorney  
Name: 37231217104A1... Title

2/11/2021  
Date

RRC use only below this line.

Div. Director: DS DAL  
CM COO: RC DS  
Procurement Dir: TL DS  
OGC: PS



**RAILROAD COMMISSION OF TEXAS**  
**ADDENDUM A –**  
**ADMINISTRATIVE LAW JUDGE**  
**SERVICES**

Outside Counsel Contract No. 455-21-1014

The Administrative Law Judge services provided may include but are not limited to the following:

- Issues involving surface mining and reclamation applications for permits, permit renewals, permit revisions, bond approvals, releases of lands that have completed reclamation requirements, and compliance matters related to notices of violation.
- Review materials from many differing scientific disciplines related to geology, soils, agronomy, surface water and groundwater. Must be capable of understanding and reviewing drawings, maps, and plans.
- Preside over contested administrative hearings, informal conferences, and pre-hearing conferences. Make rulings on objections to evidence and testimony, motions and pleadings.
- Evaluate evidence, drafts proposals for decision and orders, summarizes expert technical and legal testimony, and after researching pertinent facts and law, makes findings of fact and conclusions of law, and formulates recommendations to the Commission.
- Draft or assist in drafting administrative regulations.
- Create documents using word processing and spreadsheet programs.
- Consult with other surface mining administrative law judge.
- Conduct hearings and testimony of parties involved in hearings, using judgment to make rulings in assigned cases, and in using computers and applicable software.
- Determining and applying relevant rules and statutes, to comply with ethical standards, to recognize problems and identify and facilitate solutions, to communicate effectively, and to assign and/or supervise the work of others.

**RAILROAD COMMISSION OF TEXAS  
ADDENDUM B – RATES**

Outside Counsel Contract No. 455-21-1014

1. **Lead and Co-Lead Counsel:** Outside Counsel lead counsel and co-lead counsel names are as follows:

1.1. **Lead Counsel:** Marcella Spraggins  
**State BarNo.:** 18014000; Texas

1.2. **Documentation of good standing.** Outside Counsel shall attach documentation of Counsel's good standing with relevant licensing authority.

2. **Timekeeper classifications and billing rates.** Outside Counsel represents the rates below shall apply throughout the term of the contract.

Timekeeper Classification	Hourly Rate
Administrative Law Judge Services	\$120.00/hr

3. **Reimbursable Expenses.** Agency will reimburse Outside Counsel for actual expenses incurred in the performance of the legal services described in this 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 are included in Section 5 of the Outside Counsel Contract No. 455-21-1014
4. **Billing Period/Not to Exceed:** The billing period for this OCC shall be **Monthly**. The total of legal fees and expenses shall not exceed TWENTY-FOUR THOUSAND DOLLARS AND ZERO CENTS (\$24,000.00).