

CONTRACT NO. 455-21-1027
between
RAILROAD COMMISSION OF TEXAS
and
SIMPSON THACHER & BARTLETT LLP
for
LEGAL SERVICES

The Railroad Commission of Texas (hereinafter referred to as “**RRC**”), a state agency located at 1701 N. Congress Ave., Austin, Texas 78701 and Simpson Thacher & Bartlett, LLP (hereinafter referred to as “**Contractor**”), located at 600 Travis Street, Suite 5400 Houston, Texas 77002, enter into a contract for legal services pursuant to Texas Government Code §402.0212(a) and 1 Texas Administrative Code §57.2(b).

INDUCEMENTS

WHEREAS, RRC 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), RRC is granted exemption of obtaining approval from the OAG to contract for outside legal services; and

WHEREAS, Contractor desires to provide legal services to RRC.

AGREEMENT

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

I. CONTRACTED SERVICES/CONTRACT DOCUMENTS

1.1 **SERVICE REQUIREMENTS.** Qualified licensed Contractor to perform legal services as described in the Letter of Engagement (Exhibit A). Services shall be performed in accordance with the following:

(a.) RRC’s General Terms and Conditions (Exhibit B); and

(b.) Letter of Engagement

1.2 **INCORPORATED BY REFERENCE.** All elements listed in 1.01(a) through (b) are attached and hereby incorporated by reference and become part of the contract as if fully set forth.

1.3 **ORDER OF PRECEDENCE.** In interpreting this Contract and resolving any ambiguities, between the terms of this Service Contract-RRC Contract No. 455-21-1027 and the Additional Documents (section 1.01, a-b above), any inconsistency among the documents shall be resolved in the order in which they are listed below:

(a.) Exhibit A. Letter of Engagement

(b.) Executed Service Contract-Contract No. 455-21-1027

(c.) Exhibit B. RRC's General Terms and Conditions

II. TERM

2.1 CONTRACT AWARD.

- (a.) The Original Term of this Contract shall be from date of the last Party's signature to the Contract and shall continue for two (2) years ("Original Term"), unless extended by the parties by amendment to this contract or terminated earlier, as provided in Section 2.2 set forth below. RRC reserves the right to renew the contract for two (2) additional one-year periods, provided the renewal is executed prior to expiration of the current contract term. Any renewals shall be in writing and at the same terms and conditions, plus any approved changes.
- (b.) Notwithstanding the termination or expiration of this Contract, any provisions regarding indemnification, confidentiality, dispute resolution, intellectual property rights, audit rights, limitation of liability, limitation of distribution and warranties, will survive the termination or expiration dates of this contract.

2.2 TERMINATION.

- (a.) **Termination with Default.** RRC may terminate this Contract immediately for default by providing written notice to Contractor of such termination if the Contractor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. The defaulting Contractor may not be considered for future contracts for the same type of work, unless the scope of work is significantly changed.
- (b.) **Termination without Default.** RRC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (the "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by RRC under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 2.2(c).
- (c.) **Implementation of Termination.** Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary, as determined by RRC's Contract Administrator, hereby identified as Alexander C. Schoch, or his/her designated representative to preserve the work in progress. In the event of termination by RRC, RRC shall pay Contractor for all work performed up to the effective date of termination in accordance with the Letter of Engagement.

- 2.3 **NO LIABILITY UPON TERMINATION.** If this Contract is terminated for any reason, RRC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.

III. CONSIDERATION

- 3.1 **CONTRACT LIMIT AND FEES.** The total amount of fees to be paid under this Contract is described in Letter of Engagement (Exhibit A).
- 3.2. **EXPENSES.** RRC will reimburse Contractor for actual expenses incurred in the performance of the legal services described in Exhibit A, if such expenses are reasonable and either necessary or advisable. Contractor must provide copies of original receipts as evidence of actual expenditures. Limitations on the amount and type of reimbursement include:
- (a.) **Mileage.** RRC will reimburse Contractor 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.texas.gov/fmx/travel/texttravel/rates/current.php>
 - (b.) **Meals.** RRC will reimburse Contractor for reasonable and necessary meal expenses at the current State Travel Reimbursement Rates or actual expenses, whichever is less, for each attorney for each day requiring overnight travel. RRC will not reimburse Contractor for the purchase of alcohol. State Travel Reimbursement Rates may be found at: <https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>
 - (c.) **Lodging.** RRC will reimburse Contractor for reasonable and necessary lodging expenses at the current State Travel Reimbursement Rates or actual expenses, whichever is less, for each attorney for each day requiring overnight travel. State Travel Reimbursement Rates may be found at: <https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>
 - (d.) **Airfare.** Airfare will be reimbursed at the lesser amount of the actual expense or the regular published rates for airfares for commercial airlines. RRC will not reimburse Contractor 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.
 - (e.) **Expert Services.** Subject to RRC's prior approval, RRC will reimburse Contractor for the reasonable and necessary cost of expert services.
 - (f.) **Other Reimbursable Expenses.** RRC will reimburse the actual cost for other expenses if Contractor provides a reasonable and sufficient explanation of the nature and purpose of the charge and the charge is reasonable and either necessary or advisable.
 - (g.) **Non-Reimbursable Expenses.** RRC expects Contractor to anticipate and include routine operating expenses and disbursements as part of overhead and, therefore, part of a basic hourly rate or flat rate. Therefore, RRC will not reimburse Contractor for: routine copying and printing charges; fax charges; routine postage; office supplies; telephone charges unless related to teleconferencing services; local travel (within 20-mile radius of office including mileage, parking, and tolls); all delivery services performed by internal staff; electricity or other utilities; software costs or subscription fees, and internet or wireless access charges.
 - (h.) **Gratuity.** RRC will not reimburse Contractor for tips or gratuities.
 - (i.) **Reimbursement for RRC Employee Expenses.** RRC will not reimburse Contractor for the cost of expenses incurred by RRC employees.
 - (j.) **No Mark-up.** Contractor will only be reimbursed for actual expenses. Contractor shall not be

reimbursed for any mark-up or other overhead costs.

3.3 PAYMENTS TO CONTRACTOR.

- (a.) Payments to Contractor, if any, will be made within thirty (30) days from receipt of a correct invoice or billing statement in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by RRC. Contractor will be paid for completion of work accepted and approved by RRC's Contract Administrator or his/her designated representative.
- (b.) Contractor shall invoice RRC for work performed by Simpson Thacher & Bartlett LLP (VID No. 32044827858). Invoices must include Contract No. 455-21-1027. Address for submission is: Alexander C. Schoch, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78714-9104; or by email: alex.schoch@rrc.texas.gov.

IV. STATE FUNDING

- 4.1 **STATE FUNDING.** It is understood that all obligations of RRC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

V. CONTRACTOR PERSONNEL

- 5.1 **REQUIRED QUALIFICATIONS.** At all times during the term of the Contract, Contractor shall have available, under direct employment and supervision, the required qualified personnel to properly fulfill all the terms and conditions of this Contract.

VI. NOTICES

6.1 NOTICES.

- (a.) Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to RRC or Contractor, as the case may be, at the address set forth below:

For RRC: Railroad Commission of Texas
1701 N. Congress Ave., P.O. Box 12967
Austin, Texas 78701
Attention: Alexander C. Schoch
Telephone: 512-463-6715
Email: Alex.Schoch@rrc.texas.gov

For Contractor: Simpson Thacher & Bartlett, LLP
600 Travis Street, Suite 5400
Houston, TX 77002
Attention: Matthew Einbinder
Telephone: 713-821-5620
Email: meinbinder@stblaw.com

- (b.) Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

VII. MISCELLANEOUS PROVISIONS

- 7.1 **GOVERNING LAW AND VENUE.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Section shall be construed as a waiver of sovereign immunity by RRC.**
- 7.2 **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
- 7.3 **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.
- 7.4 **SOVEREIGN IMMUNITY.** The parties agree and acknowledge that nothing contained in this contract will in any manner be construed as a waiver of sovereign immunity or official immunity by RRC, its employees, or the State of Texas. RRC and the State of Texas retain all legal defenses and immunities available to each. RRC does not waive any privileges, rights, defenses, remedies, or immunities, available to RRC as an agency of the State of Texas or otherwise available to RRC.
- 7.5 **FALSE STATEMENTS; BREACH OF REPRESENTATIONS.** By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract, and RRC may terminate or void this Contract for cause and pursue other remedies available to RRC under this Contract and applicable law.
- 7.6 **ENTIRE CONTRACT & MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.
- 7.7 **EXECUTION SIGNATURES.** 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.

RAILROAD COMMISSION OF TEXAS

SIMPSON THACHER & BARTLETT LLP

DocuSigned by:
By: Wei Wang
Wei Wang, A320E7878B01444...
Executive Director

By: Matthew Eisbender
Printed Name: Matthew Eisbender
Title: Partner

Date of Execution: 7/14/2021

Date of Execution: 7/9/21

Div. Director: WS ^{DS} _____ RRC use only below this line.
CM COO: RC ^{DS} _____
Procurement & Contracts Director: JS ^{DS} _____
OGC: PS _____

Simpson Thacher & Bartlett LLP

600 TRAVIS STREET, SUITE 5400
HOUSTON, TX 77002-3009

TELEPHONE: +1-713-821-5650
FACSIMILE: +1-713-821-5602

Direct Dial Number
713-821-5620

E-mail Address
meinbinder@stblaw.com

July 9, 2021

Alexander C. Schoch
General Counsel
Office of General Counsel
Railroad Commission of Texas

Dear Mr. Schoch:

I am pleased to confirm that Simpson Thacher & Bartlett LLP (“we” or the “Firm”) will represent and advise the Railroad Commission of Texas (“you” or the “RRC”) in connection with matters relating to Texas HB 1520 of the 87th Legislature (the “Legislation”) and the potential issuance of consumer rate relief bonds (the “Rate Relief Bonds”) by the Texas Public Finance Authority (the “Engagement”). We are required by law to send you this letter setting forth certain terms and conditions of our representation of the RRC.

Our client for purposes of the Engagement will be the RRC and not any other entity or any of its individual commissioners, officers or employees, unless we otherwise agree. If at the RRC’s request we agree to represent any other entities or individuals, such as RRC commissioners, officers or employees, such representation shall be the subject of a new engagement letter.

It is our understanding that the Firm is not being asked to provide, and will not be providing, legal advice to, or establishing an attorney-client relationship with, any such entity or person in its individual capacity affiliated with the RRC and will not be expected to do so unless the Firm has been asked and has specifically agreed to do so in writing.

We are committed to performing services for the RRC to the best of our ability and with the independent professional judgment that an attorney owes to a client in accordance with the Rules of Professional Conduct of the State Bar of New York (the “New York Rules”) and the Texas Rules of Disciplinary Conduct promulgated by the State Bar of Texas (the “Texas Rules”), as currently effective (collectively, the “Rules of Professional Conduct”). You and we agree that to the extent New York qualified attorneys work on this engagement, the New York Rules shall be applicable to this engagement, and to the extent

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Texas qualified attorneys work on this engagement, the Texas Rules shall be applicable to this engagement. In the event of any conflict between the New York Rules and the Texas Rules, the Texas Rules shall be deemed to prevail. The State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. If you have a complaint against any attorney licensed in Texas, you may refer such a complaint to the office of the General Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711, telephone 1-800-932-1900 (toll-free).

We do not disclose nonpublic information about our clients or former clients to anyone, except as permitted by law and the Rules of Professional Conduct. We will preserve the confidentiality of any confidential information that the RRC provides to us in the course of our representing it and will not disclose or use any such information for the benefit of any other client. Conversely, we will not disclose to the RRC or use on its behalf any information with respect to which we owe a duty of confidentiality to another client or person.

The Firm represents a broad base of clients on a variety of legal matters. Accordingly, absent an effective conflicts waiver, conflicts of interest may arise that could adversely affect your ability and the ability of other clients of the Firm to choose the Firm as its counsel and preclude the Firm from representing you or other clients of our Firm in pending or future matters. Given that possibility, we wish to be fair not only to you, but to our other clients as well. Accordingly, this letter will confirm our mutual agreement that from time to time the Firm may represent clients in transactional matters, including, without limitation, representation of the RRC's investors, lenders, borrowers, underwriters or financial advisors, and various other matters, including bankruptcy, litigation, arbitration and other adversarial proceedings, in which such clients' interests may be adverse to the RRC or its affiliates. We ask that the RRC, by countersigning this letter, waive any conflict that may inhere in our representation of other clients in such matters and agree not to seek to disqualify us from such representation, provided that such matters are not substantially related to any matter in which we represent the RRC or such affiliate.

Our fee will be based on the time involved in the Engagement and our internal time charges; provided, to the extent that our fees are actually paid by the RCT, with respect to fees accrued in connection with and prior to the issuance of the Rate Relief Bonds, (1) to the extent that the charge for our time is less than \$100,000, the amount actually paid by the RCT in respect of our fee will not exceed \$50,000 and (2) to the extent that the charge for our time is more than \$100,000, the amount actually paid by the RCT in respect of our fee will not exceed the amount of our charge reduced by \$50,000. We will bill at the applicable rate in effect as of the date any services are provided.

In addition to our fees, we will bill for items incident to the performance of our legal services. Unless special arrangements are otherwise made, fees and expenses of others will be billed directly to the RRC. We would expect ongoing reimbursement of our out-of-pocket expenses. We understand that our fees and disbursement will be paid from the

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proceeds of the Rate Relief Bonds and the ‘true-up mechanism’ contemplated by the Legislation if the Rate Relief Bonds are issued; provided, however, that in the event that such fees and disbursements are not paid by thereby, the RRC will pay such fees and disbursements in accordance with the terms of this letter.

We will bill you for our professional services at such time as you and we arrange, which may be monthly, upon completion of the transaction or as we may otherwise agree provided that the bill to be actually paid by the RRC shall be in a form that is in accordance with the terms of the RRC Retention Documents (as defined below). Please review our bills when you receive them so that any questions you may have are raised as quickly as possible. You agree that if we do not receive a written notification of any questions or concerns by the date the bill is due, we may reasonably assume that you have approved of both our overall level of activity and the invoice itself. Our billing rates are based on the assumption of prompt payment and, accordingly, our statements are due upon receipt. We reserve the right to terminate our representation and charge late payment fees at any time if payment is not received within sixty days of the date of a statement. In the event we choose to terminate our representation, as permitted by the Rules of Professional Conduct, the RRC agrees not to contest our withdrawal from any court or administrative proceeding. As set forth in the New York Rules and Part 137 of the Rules of the Chief Administrator of the State of New York (22 NYCRR Part 137), the RRC, in certain circumstances, will have the right to arbitrate fee disputes.

The Firm has agreed to enter into the following additional agreements with the RRC:

(i) Contract No. 455-21-1027 between the Railroad Commission of Texas and Simpson Thacher & Bartlett LLP for Legal Services (the “RRC Contract”); and

(ii) Railroad Commission of Texas Standard Terms and Conditions Applicable to Purchases of Goods and Services (the “Standard Terms and Conditions” and together with the RRC Contract and this engagement letter, collectively, the “RRC Retention Documents”).

This engagement letter is Exhibit A to the RRC Contract. The Standard Terms and Conditions are Exhibit B to the RRC Contract. As set forth in the RRC Contract (Section 1.3 Order of Precedence), in the event of any conflict among the terms of the RRC Contract, the Standard Terms and Conditions and this engagement letter, the terms of this engagement letter shall prevail.

The Firm agrees to the terms of the RRC Contract and the Standard Terms and Conditions except as set forth below:

1. As used in the Standard Terms and Conditions, the terms “Respondent”, “Vendor”, and “Contractor” refer to the Firm. As used in the Standard

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Terms and Conditions, the term “Work Product” shall include only the final versions of documents prepared for the RRC by the Firm in connection with the Engagement.

2. The entire agreement between the Firm and the RRC shall consist of the RRC Retention Documents, and no other documents. Any references made in the Standard Terms and Conditions to other documents including, without limitation, Proposals, Requests for Proposal, RFPs, Purchase Orders and/or Change Notices are not applicable to the Firm and the Firm shall not be bound by any obligations relating to such other documents.

3. Notwithstanding any language contained in the Standard Terms and Conditions to the contrary, the following representations and warranties made with the respect to Respondent, Vendor or Contractor are made solely to the extent of Matt Einbinder’s personal knowledge, including, without limitation, Sections 9.G. Equal Opportunity Compliance, 9.R. Immigration, 9.X. Deceptive Trade Practices; Unfair Business Practices, 9.Y. Drug Free Workplace, and 9.AA. Vendor Certifications.

4. Notwithstanding any language contained in the Standard Terms and Conditions to the contrary, the following representations and warranties made with respect to Respondent, Vendor or Contractor shall apply only to the attorneys who are working on the Engagement (and who are anticipated to be Matt Einbinder, Ron Havas and David Socol de la Osa), and shall not apply to any other employees or partners of the Firm, including, without limitation, Sections I. Responsibility for Actions, O. Antitrust Affirmation, and 9.AA. Vendor Certifications.

5. Based on the information provided to the RRC by the Firm, the RRC confirms that it believes that the Firm does not have any actual or potential conflicts of interest (within the meaning of such terms in Section 9.AA.14. of the Standard Terms and Conditions) in providing services to the State of Texas under the RRC Retention Documents and that the Firm’s provisions of services under the RRC Retention Documents would not reasonably create an appearance of impropriety (within the meaning of such term in Section 9.AA.14. of the Standard Terms and Conditions).

6. Notwithstanding any language contained in the Standard Terms and Conditions to the contrary, in no event shall the Firm have any liability to the RRC in connection with the Engagement, including with respect to any indemnification obligations or other amounts addressed in the RRC Retention Documents, in excess of the amount of fees paid to the Firm by the RRC in connection with the Engagement.

7. By countersigning this engagement letter, the RRC confirms that

(i) it believes the Firm is eligible to enter into the Engagement with the RRC and will not be expected to incur any costs or expenses as contemplated under Section 7.A. All Inclusive Price, and

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(ii) it believes that the terms of the RRC Retention Documents do not violate Texas law and that no terms need to be amended, supplemented or otherwise modified in the RRC Retention Documents in order to comply with Texas law.

Please be aware that you are encouraged to consult with other counsel on any of the terms of this letter, including the waiver provisions hereof.

Any advice provided by us is for your benefit alone and must not be used or relied upon by third parties. The Firm's duty of care does not extend to third parties, except where such responsibility is accepted by us in writing.

We will consider our attorney-client relationship to be terminated upon our completion of the services that you have retained us to perform. If you later retain us to perform further or additional services, our attorney-client relationship will be revived subject to the terms of this engagement letter, unless we then agree to modify such terms.

Please note that your instructing us or continuing to instruct us with respect to the Engagement or any other matters for which you retain us pursuant to the terms of the engagement letter will constitute your full acceptance of the terms set forth herein, including, without limitation, the waiver of conflicts provisions.

You understand and agree that we may use cloud-based services to store client data, but will do so only to the extent that the stored data is at least as secure as the information in our current on-premise systems. This means (a) data will not be accessible by staff from the cloud services supplier unless required for the purpose of maintenance and support only, any access will be with prior permission only, and all activity will be logged; (b) data stored in the cloud will be protected using encryption; (c) all connections with the cloud-based solutions will be encrypted to a level that reflects the classification of the data being transmitted; (d) all compliance and regulatory requirements will be met with respect to the location (region, country) in which the data is physically housed; (e) we will ensure all suppliers understand our security requirements for client and personal data; (f) we will request that the cloud-based services providers agree that to the extent any client information or data is sought by subpoena, government request or otherwise, the service providers will promptly advise us of any such request; and (g) the contracts with all suppliers will contain either the right to audit the supplier or full access to a detailed independent audit at least once a year. If you require that we use a particular cloud storage provider that is not a preferred provider of the Firm, you agree that we assume no responsibility for the security of your data or the provider's security standards.

All records and files will be retained and disposed of in compliance with our policy in effect from time to time. It is not administratively feasible for us to advise you of the closing of a matter or the disposal of records. We recommend, therefore, that you maintain your own files for reference or submit a written request for your client files promptly upon conclusion of a matter.

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If any part of this engagement letter is deemed unenforceable for any reason, the RRC and the Firm agree that all other portions of this engagement letter shall nevertheless remain valid and enforceable.

The RRC Retention Documents represent the entire agreement of the parties, and may not be modified or replaced except by another signed written agreement.

We look forward to working with you and your colleagues. If you have any questions about any of the arrangements detailed in this letter, please let me know (713-821-5620; meinbinder@stblaw.com).

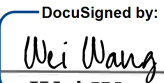
Very truly yours,

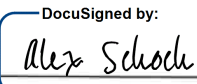
Matthew P. Einbinder

Matthew P. Einbinder

AGREED TO AND ACCEPTED BY:

RAILROAD COMMISSION OF TEXAS

By: 
Name: ~~Wei Wang~~
Title: Executive Director

By: 
Name: Alexander C. Schoch
Title: General Counsel



**RAILROAD COMMISSION OF TEXAS
STANDARD TERMS AND CONDITIONS
APPLICABLE TO PURCHASES OF
GOODS AND SERVICES**

As used herein, **RRC** shall mean the Railroad Commission of Texas, and **Vendor** shall mean the Vendor identified on the RRC Purchase Order for goods and/or services to which these RRC Standard Terms and Conditions is attached or incorporated within by reference.

The following terms and conditions shall be fully incorporated into and constitute part of any offer by Vendor to RRC and any agreement between RRC and Vendor. Vendor shall comply, and Vendor shall require all Vendor's subcontractors and sub-vendors (if any) to comply with these terms and conditions.

1. CONTRACT SCOPE:

Vendor shall provide the goods and/or services in accordance with the specifications and terms and conditions of the solicitation/agreement/purchase order/contract documents.

2. NO QUANTITY GUARANTEES:

RRC makes no express or implied guarantees or warranties that any specific quantity or dollar amount of products and related services will be procured except as agreed to within the fully executed Contract.

3. DEFINITIONS:

As used throughout the Contract, the following terms have the meaning set forth below:

- A. Compliance Check**- an audit of Vendor's compliance with the Contract may be performed by a third-party auditor, RRC's internal audit department, RRC's contract management and/or purchasing staff, or RRC's authorized designees.
- B. Contract** - the entire agreement between RRC and Vendor, including all the Contract Documents, into which these Terms and Conditions are incorporated as if fully set forth therein.
- C. Contract Documents** – includes the fully executed agreement between RRC and Vendor and fully executed amendments thereto (if any), these “Terms and Conditions of the Contract”, specifications, solicitation documents, purchase orders, and any exhibits, appendices, and attachments thereto and incorporated therein through written reference.
- D. Day** - business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- E. Party** – individually either RRC or Vendor; collectively, “Parties”.
- F. Purchase Order** - RRC's fiscal form or format used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or another authorized instrument.) An RRC Purchase Order may be considered a Contract or one document of a collective set of Contract Documents that comprise a Contract.
- G. State**- the State of Texas.
- H. Term**- means the period during which the Contract remains in force and effect. Extension of the Term shall occur only through written amendment to the Contract, fully executed prior to date of the Contract's then current Term.

4. GENERAL PROVISIONS:**A. Entire Agreement:**

The Contract Documents constitute the entire agreement between RRC and Vendor. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained in the Contract Documents shall be binding or valid.

B. Modification of Contract Terms and/or Amendments:

The terms and conditions of the Contract shall govern all transactions between RRC and Vendor under the Contract. The Contract may be amended only upon written agreement between RRC and Vendor; however, the Contract may not be amended in a manner that conflicts with the laws of the United States or of the State of Texas.

C. Invalid Term or Condition:

1. To the extent any term or condition in the Contract conflicts with any applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, RRC makes no representations or warranties regarding the enforceability of such term or condition and RRC does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.
2. If one or more terms or conditions in the Contract, or the application of any term or condition to a Party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to a Party or circumstance shall remain valid and in full force and effect.

D. Assignment:

Vendor may not assign the Contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the Contract without the prior written consent of RRC, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void.

E. Survival:

All applicable guarantees and warranties for products and services delivered under the Contract shall survive the expiration or termination of the Contract. Rights and obligations under this Contract which by their nature should survive, including but not limited to any payment obligations invoiced prior to the termination or expiration hereof, obligations of confidentiality, and indemnification will remain in effect after termination or expiration hereof.

F. Governing Law and Venue:

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in a court of competent jurisdiction, Travis County, Texas. The Parties expressly agree that no provision of the Contract, Exhibits, Appendices, Amendments, or any Purchase Order is in any way intended to constitute a waiver by the State of Texas or by the RRC of any immunities from suit or from liability that the State of Texas or the RRC may have by operation of law. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the State of Texas and the RRC under this Contract or under applicable law does not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

G. Limitation of Authority:

Vendor shall have no authority to act for or on behalf of the State of Texas except as expressly provided for in this Contract; no other authority, power, or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or RRC.

H. Proof of Financial Stability:

RRC may require Vendor to provide proof of financial stability prior to or at any time during the Contract term.

I. Vendor Identification:

Vendor shall provide Vendor's Texas Identification Number (TIN) issued by the Texas Comptroller of Public Accounts prior to Vendor issuing its first invoice to RRC.

5. PRODUCT TERMS AND CONDITIONS:**A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only):**

1. Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
2. Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide RRC with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

B. Warranties:

Notwithstanding any disclaimers in Vendor's terms and conditions and notwithstanding any other provision of the Contract to the contrary, Vendor warrants and guarantees that all services will meet all specifications of the Contract.

6. CONTRACT FULFILLMENT:**A. Use of Access Data Prohibited:**

If Vendor stores, collects, or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor to implement the Contract and shall not be disseminated to third parties or used for marketing or other purposes unauthorized by RRC.

B. Orientation Meeting:

At discretion of RRC, an orientation meeting to discuss the content and procedures of the Contract may be required. In the event of such requirement, Vendor agrees to attendance of such meeting. Orientation meeting may be scheduled at a mutually agreed time and location; RRC reserves the right to schedule such meeting to be held via telephone or teleconference.

7. PRICING, PURCHASE ORDERS, INVOICES, AND PAYMENTS:**A. All-inclusive Price:**

Unless otherwise noted within the Contract Documents, the purchase price to be paid by RRC to Vendor under this Contract shall include all expenses related to Vendor's delivery of all goods and/or services required under the Contract.

B. Tax-Exempt:

As per Section 151.309, Texas Tax Code, purchased by RRC under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, purchases by RRC under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

C. Purchase Orders:

As applicable, all RRC Purchase Orders will be placed directly with the Vendor. Accurate Purchase Orders not conflicting with the Contract Documents shall be effective and binding upon Vendor when accepted by Vendor.

D. Invoices:

1. Invoices shall be submitted by the Vendor directly to RRC and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the RRC to Vendor.
2. Invoices must be timely and accurate. Each invoice must match RRC's Purchase Order and include any written changes that may apply, as it relates to products, prices, and quantities, as applicable. Invoices must include the RRC's Purchase Order number or other pertinent information for verification of receipt of the product or services by the RRC.

E. Payments:

RRC shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

8. CONTRACT ADMINISTRATION:**A. Contract Managers:**

RRC and Vendor will each provide a dedicated staff member to support the Contract.

1. State Contract Specialist:

RRC shall provide a Contract Specialist or Purchasing Manager whose duties shall include, but not be limited to, i) advising RRC and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor, if required.

Upon execution of the Contract, RRC shall provide Vendor with written notification of the RRC Contract Specialist's name and contact information.

2. Vendor Contract Manager:

Vendor shall provide a dedicated Contract Manager or designated point of contact whose duties shall include but not be limited to: i) supporting the management of the Contract, ii) facilitating dispute resolution between Vendor and RRC, and iii) advising RRC of Vendor's performance under the terms and conditions of the Contract. RRC reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of RRC, adequately serving the needs of the State.

Upon execution of the Contract, Vendor shall provide RRC with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports (if required under the Contract) and receiving RRC's payment.

B. Records and Audit:

1. The State auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the State auditor, 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, an entity that is the subject of an audit or investigation by the State auditor must provide the State auditor with access to any information the State auditor considers relevant to the investigation or audit. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract.
2. Vendor shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: Vendor's name, RRC name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, RRC Purchase Order number, contact name, RRC's complete billing address, HSP reports, and such other documentation as RRC may request.
3. Upon reasonable request of RRC, Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the RRC Internal Audit department or RRC Contract Management staff, including the compliance checks designated by the RRC Internal Audit department, RRC Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by RRC for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor shall provide copies and printouts requested by RRC without charge. RRC shall provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the Vendor's books and records shall be available to the RRC Internal Audit department, RRC Contract Management staff, and/or designees as needed. Vendor shall provide adequate office space to RRC staff during the performance of Compliance Checks. If Vendor is found to be responsible for inaccurate reports, RRC may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

9. VENDOR RESPONSIBILITIES:**A. Indemnification:****1. General:**

VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND RRC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE TEXAS

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

THIS GENERAL INDEMNIFICATION SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OF TEXAS OR RRC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE RRC OR ITS EMPLOYEES.

For avoidance of doubt, RRC shall not indemnify Vendor or any other entity under this Contract.

2) Infringement: Patent, Trademark, Copyright, and Other Intellectual Property:

C. Claims.

VENDOR SHALL INDEMNIFY, SAVE, AND HOLD HARMLESS THE STATE OF TEXAS AND RRC FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER BY VENDOR; AND/OR (3) THE STATE'S OR RRC'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE RRC BY VENDOR OR OTHERWISE TO WHICH THE STATE OF TEXAS AND/OR RRC HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THIS CONTRACT. VENDOR AND THE STATE OF TEXAS AND/OR RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN THE STATE OF TEXAS AND/OR THE RRC ARE/IS NAMED AS A DEFENDANT IN ANY LAWSUIT, AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE WRITTEN CONCURRENCE FROM THE OAG. IN ADDITION, VENDOR SHALL REIMBURSE THE STATE OF TEXAS AND THE RRC FOR ANY CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, JUDGMENTS, OR ANY OTHER AMOUNTS INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF RRC DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF VENDOR OR IF RRC IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, RRC WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF RRC'S COUNSEL. VENDOR REPRESENTS THAT IT HAS DETERMINED WHAT LICENSES, PATENTS, AND PERMITS, IF ANY, ARE REQUIRED UNDER THIS CONTRACT AND HAS ACQUIRED ALL SUCH LICENSES, PATENTS, AND PERMITS.

D. Notice.

If Vendor becomes aware of an actual or potential claim, or RRC provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against RRC, shall), at Vendor's sole option and expense; (i) procure for RRC the right to continue to use the affected portion of Vendor's goods and/or services, or (ii) modify or replace the affected portion of Vendor's goods and/or services with functionally equivalent or superior product or service so that RRC's use is non-infringing.

E. Limitations.

Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of Vendor's goods and/or services for a purpose or in a manner for which Vendor's goods and/or services were not designed, (ii) any modification made to Vendor's goods and/or services without Vendor's written approval, (iii) any modifications made to Vendor's goods and/or services by Vendor pursuant to RRC's specific instructions, (iv) any intellectual property right owned by or licensed to RRC, or (v) any use of Vendor's goods and/or services by RRC that is not in conformity with the terms of any applicable license agreement.

B. Independent Contractor:

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE STATE OF TEXAS OR THE RRC. Vendor's employees are not and shall not be construed as employees or agents of the State of Texas or RRC. Subject only to the terms of this Contract, Vendor shall have the sole right to supervise, manage, operate, control, and direct performance of its duties under this Contract. Nothing contained in the Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for RRC whatsoever with respect to the indebtedness, liabilities, and obligations of Vendor or any other party.

C. Taxes/Worker's Compensation/Unemployment Insurance:

1. VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE RRC AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY RRC.
2. VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS RRC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS

PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

D. Legal Obligations:

Vendor shall procure and maintain for the duration of the Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification, or certification required by statute, ordinance, law, or regulation to be held by Vendor to provide the goods or services required by the Contract. Vendor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Vendor shall be responsible for payment of any such government obligations not paid by its subcontractors during performance of Contract.

E. Federal, State, and Local Requirements:

Vendor shall demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to common law employees. Vendor is solely responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Vendor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Vendor or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Vendor shall indemnify the State of Texas and RRC and shall pay all costs, penalties, or losses resulting from Vendor's omission or breach of this section.

F. Ability to Conduct Business in Texas:

Vendor shall be authorized and validly existing under the laws of its state of organization and shall be authorized to do business in the State of Texas.

G. Equal Opportunity Compliance:

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

H. Use of Subcontractors:

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

I. Responsibility for Actions:

1. Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of RRC or the State.
2. Vendor, for itself and on behalf of its subcontractors, shall report to RRC promptly any changes to the disclosures, certifications, representations, and warranties within the Contract Documents, including but not limited to those within section 10 of this Exhibit A-Terms and Conditions of the Contract. Vendor covenants to fully cooperate with RRC to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.
3. Vendor agrees to fully cooperate with RRC in the execution of any Contract amendments necessary to effectuate compliance with laws of the State of Texas when such laws require RRC to include additional language in the Contract. During the term of the Contract and any extensions thereof, RRC reserves the right to request amendments or modifications to the Contract when RRC determines such action to be in the best interests of the State of Texas and/or RRC and for compliance with all applicable state and federal laws, regulations, requirements, and guidelines.

J. Confidentiality:

1. Vendor acknowledges that RRC is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that RRC is a government agency that will comply with the Public Information Act and with all opinions of the Texas Attorney General's office concerning this Act.
2. Information, documentation, and other material in connection with the Contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Texas Government Code §2252.907, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Specific formats acceptable to RRC include MS Word®, MS Excel®, and *.pdf.
3. Under the terms of the Contract, RRC may provide Vendor with information related to RRC. Vendor shall not re-sell or otherwise distribute or release RRC information to any party in any manner.

K. Security of Premises, Equipment, Data and Personnel:

Vendor may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and/or materials (collectively referred to as "Data") belonging to the RRC. Vendor shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the RRC, in accordance with the instruction of the RRC. Vendor shall be responsible for damage to RRC's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor fails to comply with RRC's security requirements, then RRC may immediately terminate its Purchase Order and related Service Agreement.

L. Background and/or Criminal History Investigation:

By signature to the Contract, Vendor agrees and consents that prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the RRC under the Contract may be performed by RRC. Should any employee or subcontractor of the Vendor who will be providing services to the RRC under the Contract not be acceptable to the RRC because of results from the background and/or criminal history check, then RRC may immediately terminate the Contract or request replacement of the employee or subcontractor in question.

M. Limitation of Liability:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the RRC shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

N. Overcharges:

Vendor hereby assigns to RRC all its 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., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

O. Antitrust Affirmation:

Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Respondent.

P. Required Insurance Coverage:

As a condition of this Contract with RRC, Vendor shall provide the listed insurance coverage within five (5) business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any RRC premises and/or use employer vehicles to conduct work on behalf of RRC. Vendor may not begin performance under the Contract until such proof of insurance coverage is provided to, and approved by, RRC.

1. All required insurance must be issued by companies that have both a financial strength rating of A or better and a financial size category class of VII or better by A.M. Best, licensed in the State of Texas, and authorized to provide the corresponding coverage.
2. Policies shall be provided on a form approved by the Texas Department of Insurance and be satisfactory to the RRC.
3. Required policies and coverages must be written on a primary and non-contributory basis with any other insurance coverage Vendor currently has in place, include a Waiver of Subrogation endorsement, and provide 30-day Notice of Cancellation, non-renewal, or reduction in coverage.

4. All certificates of insurance except Worker's Compensation shall name the State of Texas and the Railroad Commission of Texas as Additional Insureds.
5. Failure to obtain, maintain, and/or renew the required insurance shall constitute a material breach of and default under this Contract. If Vendor fails to remedy such breach within five (5) business days after notice by the RRC, Vendor will be liable for all costs, liabilities, damages and penalties resulting to the State of Texas and the RRC from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Vendor by the RRC. In the event of any failure by Vendor to comply with the provisions of this Contract, the RRC may, without compromising or waiving any right or remedy at law or in equity, on notice to the Vendor, purchase such insurance, at the Vendor's expense, provided that the RRC shall have no obligation to do so and if the RRC shall do so, Vendor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
6. Required coverage must remain in effect through the full term of the Contract. The minimum acceptable insurance provisions are as follows:

Table 1: Minimum Acceptable Insurance Provisions

| <u>Type of Insurance</u> | <u>Each Occurrence/Aggregate</u> |
|--|---|
| Worker's Compensation | Statutory limits Pursuant to Texas Labor Code §§406.096(a) and 406.096(b) |
| Employer's Liability Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease | \$1,000,000 Each Accident \$1,000,000 Each Employee \$1,000,000 Policy Limit |
| Commercial General Liability (occurrence based) Includes liability arising out of all locations and operations of Vendor, including but not limited to liability assumed under this Contract (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limits of liability. | Bodily Injury and Property Damage \$1,000,000 Each Occurrence Limit \$2,000,000 Aggregate Limit \$5,000 Medical Expense each person \$2,000,000 Products/Completed Operations Aggregate Limit \$1,000,000 Personal Injury and Advertising Liability |
| Automobile Liability. <u>Any Auto</u> coverage required | \$1,000,000 Combined Single Limit (for each accident) |
| Other. (Example: Umbrella, Prof. Liability) | \$\$\$\$, \$\$\$, \$\$\$ Each/Limit type (as applicable) |

Q. Use of State Property:

Vendor is prohibited from using the RRC's equipment, the RRC's location, or any other resources of the RRC or the State for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the RRC's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the RRC immediately upon demand by the RRC. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to RRC and RRC under the contract and applicable law.

R. Immigration:

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Vendor shall require its subcontractors to comply with the requirements of this section, and Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

S. U.S. Department of Homeland Security's E-Verify System:

By entering into this Contract, the Vendor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system (<https://www.uscis.gov/e-verify>) to determine the eligibility of:

1. All persons employed to perform duties within Texas, during the term of the Contract; and
2. All persons (including subcontractors) assigned by Vendor to perform work pursuant to the Contract, within the United States of America.

Vendor shall provide, upon request of RRC, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Vendor, and Vendor's subcontractors, as proof that this provision is being followed.

IF THIS CERTIFICATION IS FALSELY MADE, THE CONTRACT MAY BE IMMEDIATELY TERMINATED, AT THE DISCRETION OF RRC AND AT NO FAULT TO RRC, WITH NO PRIOR NOTIFICATION. IN THE EVENT OF SUCH TERMINATION, VENDOR SHALL BE RESPONSIBLE FOR DIRECT, CONSEQUENTIAL, AND INDIRECT COSTS OF ANY SOLICITATION RRC MUST UNDERTAKE TO REPLACE THE TERMINATED CONTRACT.

T. Public Disclosure:

No public disclosures or news releases pertaining to this Contract shall be made without prior written approval of RRC.

U. Product and/or Services Substitutions:

Substitutions are not permitted without the written permission of RRC.

V. Warranties:

Notwithstanding any disclaimers in Vendor's Proposal and notwithstanding any other provision of the Contract to the contrary, Vendor warrants and guarantees that all services will meet all specifications of the Contract.

W. Secure Erasure of Hard Disk Products and/or Services:

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services in accordance with 1 TAC 202.

X. Deceptive Trade Practices; Unfair Business Practices:

Vendor represents and warrants that neither Vendor nor any of its subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

Y. Drug Free Workplace Policy:

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Vendor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

Z. Vendor Reporting Requirements:

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

AA. Vendor Certifications:

Vendor certifies that the information contained in this Contract is accurate and complete. By Vendor's signature affixed to the Contract, Vendor certifies on behalf of Vendor and Vendor's subcontractors, if any, that they:

1. have not given, offered to give, and do not 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 Contract;
2. are not currently delinquent in the payment of any franchise tax owed the State and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
3. under Section 231.006 of the Family Code, Vendor certifies that the individual or 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;
4. neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for obtaining an unfair price advantage;
5. have not received payment from RRC or any of its employees for participating in the preparation of the Contract;
6. under §2155.004(b) of the Texas Government Code, Vendor certifies that the individual or business entity named in the Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated, and payment withheld, if this certification is inaccurate;

7. to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
8. Vendor and its principals are not suspended, debarred, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency;
9. as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #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;
10. to the extent applicable to the Contract, Vendor certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328;
11. agree that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support;
12. are in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency, and Vendor certifies that it is not (1) the executive head of RRC, (2) a person who at any time during the four years before the date of the Contract was the executive head of RRC, or (3) a person who employs a current or former executive head of RRC;
13. have identified all current or former, within the last five years, employees of the State assigned to work on the RRC Contract 20% or more of their time and have disclosed them to RRC and have disclosed or do not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
14. represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
15. under §§2155.006 and 2261.053 of the Texas Government Code Vendor and Vendor's subcontractors, if any, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated, and payment withheld, if this certification is inaccurate;
16. have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.
17. in accordance with §2155.4441, Texas Government Code, Vendor agrees that during the performance of this Contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state;

18. represent and warrant that the RRC's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
19. represent and warrant that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by §2252.152 of the Texas Government Code;
20. represent and warrant that (1) Vendor does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Texas Government Code §2270.002 does not apply to the Contract, and if circumstances relevant to this provision change during the course of the Contract, Vendor shall promptly notify RRC;
21. to the extent applicable to the Contract, Vendor represents and warrants that it will comply with the requirements of Texas Government Code §2054.5192 relating to cybersecurity training and required verification of completion of the training program;
22. upon request of RRC, Vendor shall provide the descriptions of its business continuity and disaster recovery plans;
23. under §2155.0061 of the Texas Government Code Vendor certifies that the individual or business entity named in the Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminate and payment withheld if this certification is inaccurate;
24. if Vendor signs the Contract with a false statement or it is subsequently determined that Vendor has violated any of the representations, warranties, guarantees, certifications, or affirmations included in the Contract, Vendor will be in default under the Contract and RRC may terminate or void the Contract;
25. the individual signing the Contract (including a Purchase Order issued by RRC), is duly authorized to execute the Contract on behalf of the Vendor.

10. CONTRACT ENFORCEMENT:

A. Enforcement of Contract and Dispute Resolution:

1. Vendor and RRC agree to the following: (i) a Party's failure to require strict performance of any provision of the Contract shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision; (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; and (iii) actions or proceedings arising from the Contract shall be heard in any court of competent jurisdiction in Travis County, Texas.
2. Disputes arising between a RRC and Vendor shall be resolved in accordance with the dispute resolution process in subparagraph A.1), above. RRC shall not be a Party to any dispute resolution process inconsistent with that listed in subparagraph A.1), above, unless RRC and Vendor otherwise agree in writing.
3. State agencies are required by 34 TAC §20.115 to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

B. Termination:

The Contract may be terminated, canceled, or cancellation of services may occur, in whole or in part, in any one of the following circumstances

1. Termination or Cancellation for Convenience:

- a) **Bi-lateral Agreement:** Upon a written agreement between RRC and Vendor the Contract may be terminated or canceled.
- b) **RRC Cancel Upon Thirty (30) Days' Notice:** RRC may in its sole discretion terminate, cancel the Contract, or cancel specific services of the Contract with thirty (30) calendar days' written notice to Vendor.

2. Termination for Lack of Appropriated Funds, Legislative Action, or Necessity of Performance:

The Contract is subject to termination or cancellation, without penalty to RRC, in either whole or in part, subject to the availability of state funds. In the event of a termination or cancellation under this Part, RRC will not be liable to Vendor for any damages which are caused or associated with such termination or cancellation, and RRC will not be required to give prior notice.

3. Termination or Cancellation for Cause:

- a) **Absolute Right:** RRC shall have the absolute right to terminate the Contract without recourse in the event: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #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; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Vendor is found by RRC to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.
- b) **Breach of Material Term:** Either party may, upon giving thirty (30) calendar day's written notice identifying specifically the basis of such notice, terminate the Contract for breach of a material term or condition of the Contract, provided the breaching party must not have cured such breach within the thirty (30) calendar day period. In the event of such termination, Vendor will be paid for all services accepted prior to the date of the termination.

No additional charges or fees will be assessed to RRC for the termination or cancellation.

Upon termination or cancellation under this provision, Vendor shall refund to RRC any amounts attributable to the terminated or canceled months within thirty (30) days of the termination or cancellation.

- c) **Vendor Nonperformance:** If Vendor defaults on the Contract after execution of the Contract, RRC reserves the right to cancel the Contract without notice. In such instance Vendor will not be considered for award of a Contract, and may not be considered in future solicitations, for the same type of work unless the specification or scope of work significantly changed. Vendor's period of suspension from being considered will be determined by the agency based on the seriousness of the default. The Vendor remains liable for all covenants and indemnities under the Contract. The Vendor is liable for all costs and

expenses, including court costs, incurred by RRC with respect to the enforcement of any remedies listed herein.

d) **Bankruptcy:** Upon the filing of a petition for bankruptcy, or upon the judgment of bankruptcy or insolvency by or against the Vendor, RRC may terminate the Contract for cause without notice. Such termination shall be effective upon the date of such filing or upon the date of judgment.

e) **Legal Remedies and Damages from Breach of Contract:** RRC expressly reserves all legal remedies to which it may be entitled to collect and all damages directly or indirectly resulting from breach of contract by Vendor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of Vendor. RRC reserves the right to pursue all applicable rights and remedies if the Contract is terminated for any reason and RRC expressly waives no such rights or remedies.

f) **Substitution of Services:** In the event of RRC's termination or cancellation of the Contract for cause, RRC may procure, upon such reasonable terms and in such manner as RRC deems appropriate, substitute services similar to any services terminated or canceled. Vendor shall be liable to RRC for any excess or additional costs incurred by RRC in acquiring such services plus court costs and attorneys' fees. RRC's recovery of costs under this section is in addition to any other remedies available to RRC under the Contract and/or under applicable law.

4. Miscellaneous Termination Provisions:

a) **RRC Rights Under Termination:** In the event the Contract expires or is terminated for any reason RRC shall retain its rights under the Contract.

b) **Vendor Rights Under Termination:** In the event a Purchase Order expires or is terminated RRC shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.

c) **Recovery of Funds:** RRC reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to RRC under the Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Vendor's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to RRC under the Contract or under applicable law. RRC reserves the right to pursue all applicable rights and remedies if the Contract is terminated for any reason, and RRC expressly waives no such rights or remedies.

5) Force Majeure:

RRC or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the Party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the Party's control to ensure performance and to shorten the duration of the event of Force Majeure. The Party suffering an event of Force Majeure shall provide notice of the event to the other Party when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, RRC may terminate a Purchase Order if it is determined by RRC that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of RRC.

Notwithstanding the foregoing paragraph, in the event any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against Vendor at RRC's facility and such

labor activity results in the curtailment or discontinuation of services performed under the Contract, RRC shall have the right during said period to employ any means legally permissible to have the work performed.

C. Severability.

If any provision contained in the Contract is held to be unenforceable by a court of law or equity, the Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

11. NOTIFICATION:

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to the awarded vendor at address indicated below or to such other address as such other address as such Party shall have notified the other Party in writing.

A. Vendor Contact and Notice Information:

Simpson Thacher & Bartlett, LLP

Point of Contact: Matthew Einbinder

Physical Address: 600 Travis Street, Suite 5400

City, State, Zip: Houston TX, 77002

Mailing Address: Simpson Thacher & Bartlett, LLP

600 Travis Street, Suite 5400

Houston TX, 77002

Phone: 713-821-5620

Email: meinbinder@sbtlaw.com

B. RRC Contact and Notice Information:

Railroad Commission of Texas

Point of Contact: Alex Schoch

Physical Address: 1701 N. Congress Avenue

Austin, TX 78701

Mailing Address: Railroad Commission of Texas

PO Box 12967

Austin, TX 78711-2967

Phone: 512-463-6715

Email: alex.schoch@rrc.texas.gov

12. CAPTIONS:

Captions, titles, headers, and labels contained in the Contract, Exhibits, Appendices, and Attachments, if any, are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

13. COUNTERPARTS:

The Contract may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

14. SIGNATURES:

The Parties agree that where the Contract and any written amendments thereto necessary for the consummation of the transaction contemplated by the Contract requires signature of one or more Party, such Contract and any amendments thereto 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. If signature is required, the Parties to this Contract have electronically executed this Contract which shall be deemed an original. By affixing of a signature to the Contract each signatory represents and warrants that they have the authority to enter into the Contract on behalf of the respective Parties.